

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSE HILLS,
Plaintiff,

vs.

SAM'S EAST, INC., SAM'S CLUB, AND
WAL-MART, INC., FORMERLY KNOWN
AS WAL-MART STORES, INC.,
Defendants.

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Civil Action No. 6:18-cv-00301-ADA-JCM

**DEFENDANTS' MOTION TO EXCLUDE THE EXPERT OPINIONS OF
HECTOR MIRANDA-GRAJALES, MD, CLCP**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Sam's East, Inc., Sam's Club, and Wal-Mart Inc., formerly known as Wal-Mart Stores, Inc. (collectively "Defendants") in the above-styled and numbered cause and files this Motion to Exclude the Expert Opinions of Hector Miranda-Grajales, M.D., CLCP, and for cause would show as follows:

I. SUMMARY OF ARGUMENT

The opinions of Plaintiff's retained expert, Dr. Miranda-Grajales, should be excluded as they are: unreliable, irrelevant, lack proper foundation, and include improper legal conclusions. Dr. Miranda-Grajales testified that he relied solely on one cost source in arriving at the cost of Plaintiff's future medical treatment while discounting Plaintiff's actual billed charges for the same treatment. He further admits that his cost of treatment fails to account for the time value of money and is without the support of an accredited economist or other similar expert. Dr. Miranda-Grajales admits he lacks the expertise necessary to evaluate Plaintiff's future cost per the time value of money. Lastly, Dr. Miranda-Grajales provides conclusory unfounded medical opinions regarding

causation of Plaintiff's alleged injuries. Thus, his opinions will not assist the trier of fact and should be excluded.

II. BACKGROUND

This matter arises out of an incident that occurred in the parking lot of the Sam's Club located in Temple, Texas on October 13, 2016. *See Ex. A: Plf's First Am. Cmplt.* Plaintiff seeks recovery of medical expenses in the past and future, among other claimed damages. *See id.* In support of her claims, Plaintiff identifies Hector Miranda-Grajales, M.D., CLCP, as a retained testifying expert. *See Ex. D: Plf's Expert Disclosures.* Based on this designation, Dr. Miranda is expected to testify that Plaintiff's collision caused injuries for which she will require future medical treatment in the total amount of \$713,802.00 to \$1,261,770.00. *See id.; see also, Ex. A.*

III. ARGUMENTS & AUTHORITIES

Federal Rules of Evidence 702 and 703, as interpreted in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), govern the admissibility of testimony of expert witnesses. Before allowing expert testimony to be heard, a district court must be assured that the proffered witness is qualified to testify by virtue of his or her "knowledge, skill, experience, training or education." *See id.* The party seeking to rely on expert testimony bears the burden of establishing, by a preponderance of the evidence, that all requirements have been met. *Daubert*, 509 U.S. at 593, n.10; *Moore v. Ashland Chem., Inc.*, 151 F.3d 269, 276 (5th Cir. 1998); *Kumho*, 526 U.S. at 147.

In *Daubert*, the Supreme Court held that expert scientific testimony must be "grounded in the methods and procedures of science" and based on "more than a subjective belief or unsupported speculation." *Id.* at *24 (quoting *Daubert*, 509 U.S. at 590). The Supreme Court explained that proposed testimony must be supported by appropriate validation, that is, "good grounds," based

upon what is known. *Id.* To be admissible under the *Daubert* standard, an expert's opinion must have a "reliable basis in the knowledge and experience of his discipline." *Id.* To determine reliability of expert opinion, trial courts must analyze the *Robinson* factors, which include:

- (1) the extent to which the theory has been or can be tested;
- (2) the extent to which the technique relies upon the subjective interpretation of the expert;
- (3) whether the theory has been subjected to peer review and/or publication;
- (4) the techniques potential rate of error;
- (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- (6) the non-judicial uses which have been made of the theory or technique.

Robinson, 923 S.W.2d at 557.

In evaluating the admissibility of expert testimony, the key factors are reliability and relevance. *Daubert*, 509 U.S. at 589 (under Rule 702, expert testimony must be "not only relevant, but reliable"). The overarching goal of *Daubert*'s gatekeeping requirement, however, is to ensure the reliability and relevancy of expert testimony and to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field. *Kumho*, 526 U.S. at 152. A district court should refuse to allow an expert witness to testify if it finds that the witness is not qualified to testify in a particular field or on a given subject. *Wilson v. Woods*, 163 F.3d 935, 937 (5th Cir. 1999). The issue is whether a particular expert has "sufficient specialized knowledge to assist the jurors [or trier of fact] in deciding the particular issues" *Kumho*, 526 U.S. at 156 (internal quotation omitted). It is the role of the district court to assure "that the proffered witness is qualified to testify by virtue of his 'knowledge, skill, experience,

training, or education." *Id.* (quoting FED. R. EVID. 702). A court "should refuse to allow an expert witness to testify if the witness is not qualified to testify in a particular field or on a given subject." *Id.*; *Falcon v. State Farm Lloyds*, No. 1:12-CV-491-DAE, 2014 U.S. Dist. LEXIS 83040, at *10-11 (W.D. Tex. June 16, 2014).

When the testimony involves scientific knowledge, the expert's conclusions must be "grounded 'in the methods and procedures of science.'" *Robinson*, 923 S.W.2d at 557 (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (U.S. 1993)). Otherwise, the testimony is "no more than 'subjective belief or unsupported speculation.'" *Id.* (quoting *Daubert*, 509 U.S. at 590). Because the party sponsoring the expert bears the burden of showing that the expert's testimony is admissible, the burden of presenting understandable evidence that will persuade the trial court is on the party presenting the expert's testimony. *See Robinson*, 923 S.W.2d at 557.

A. Dr. Miranda's Opinions Are Irrelevant, Unreliable, Lack Proper Foundation and Must be Excluded as They are Based on One Cost Source of Which Dr. Miranda Lacks Knowledge of the Specific Data Upon Which that Source Relies and His Opinions Are Not Based on His Own Expertise or Specialized Knowledge.

In the instant case, Dr. Miranda opines that Plaintiff will require medical treatment and care for the rest of her life (another 48 years). *See Ex. "A"* at p. 2-12. Per Dr. Miranda's testimony, he relies solely on the Fairhealth.org website in identifying the present cost of the prescriptions he includes in Plaintiff's life care plan. *See Ex. C* 66:14-67:22. Dr. Miranda testified that he subscribes to this website, inserts the CPT code and a ZIP code, and Fairhealth.org will provide a cost of treatment. *See Id.* Dr. Miranda has no knowledge of the data upon which this website relies in arriving at the cost of treatment it provides to him. *See Id.* Dr. Miranda simply inputs information and the website spits out a response. In fact, Dr. Miranda cannot tell the jury what data the website considers, other than billed rates gathered from providers in the certain area from Medicare and private payers, in arriving at a particular cost. *See Id.* Specifically, Dr. Miranda cannot explain to

the jury the particular data the website relies on, the particular payors, particular billers, how large a server they use, or how large a sample they use in formulating a particular medical cost. *See Id.* However, Dr. Miranda does know the cost of Plaintiff's actual past treatment, the same of which is also included in her life care plan. As an example, Dr. Miranda included in Plaintiff's life care plan a recommendation that she have one cervical MRI every five years at a cost of \$2,954.00 per MRI. *See Ex. "A"* at p. 8,12. This estimated cost, obtained solely from his reliance on Fairhealth.org, is \$2,602.00 more than the actual amount Plaintiff was charged for this same treatment as noted in her billing records related to the underlying incident. *See Ex. "C"* at 68:3-17. Further, Dr. Miranda admits that he solely relies on this database to determine the cost of treatment, like a cervical MRI, and did not refer to Plaintiff's own billing records for the same treatment she already incurred and that she will continue to incur in the future if she follows the life care plan. *See Ex. "C"* at 68:18-25 and 69:15-22.

Dr. Miranda's sole reliance on one database that he did not create and does not have knowledge of the data utilized by that database is unreliable and lacks any sort of scientific approach or specialized knowledge. It does not require an expert to input a CPT code in a website as Dr. Miranda did when he created Plaintiff's life care plan. In essence, the jury is capable of completing the same task and obtaining the same information as Dr. Miranda. Accordingly, his opinions do nothing to assist the trier of fact in this case and should be excluded.

B. Dr. Miranda's Opinions Are Irrelevant, Unreliable, and Lack Proper Foundation and Must be Excluded as They Fail to Account for the Time Value of Money.

In the instant case, Dr. Miranda opines that Plaintiff will require medical treatment and care for the rest of her life (another 48 years). *See Ex. "A"* at p. 2-12. As noted above, and per Dr. Miranda's testimony, he relies solely on the Fairhealth.org website in identifying the cost of the

prescriptions he includes in Plaintiff's life care plan. *See Ex. "C"* 66:14-67:22. Dr. Miranda testified that he subscribes to this website for him to utilize in obtaining a cost of treatment. *See Id.*

In his report, Dr. Miranda determines the nominal values, *i.e.* the value in today's dollars, of the medical treatment, care, and therapies Plaintiff will allegedly require in the future and extrapolates those nominal costs over the course of Plaintiff's remaining 48 years of life. *See id.* To take a specific example, Dr. Miranda opines that Plaintiff will require 1 unit of the drug Emgality for the treatment of post-traumatic headaches per month each year of her life through the age of 85. *Id.* at p. 12. Dr. Miranda determines the nominal value of this injection/unit, *i.e.* how much it would cost today, and uses that nominal value to opine as to what the injection will cost in 2068, when Plaintiff will actually receive the injection. *Id.* at p. 8, 12. Dr. Miranda offers no opinion as to the future or present value of any of the treatment he recommends for Plaintiff over the next 48 years. *Id.* at p. 1-12. Because Dr. Miranda offers no opinion as to the future or present value of the costs of Plaintiff's future medical care, his opinions regarding the nominal value of the care are irrelevant; they will not aid or assist the jury in determining what the medical care will cost in the future when the costs are actually incurred by the Plaintiff. *Id.*; *see also Gharda USA*, 464 S.W.3d at 349.

Further, Dr. Miranda admits in his deposition that he did not adjust Plaintiff's life care plan to account for the time value of money. *See Ex. "C"* at 45:21-23 and 46:23-47:12. Even more interesting is that not only does Dr. Miranda not account for the present value of money, he also admits that the drugs he includes in Plaintiff's life care plan can reduce in price over time. *See Ex. "C"* at 45:24-46:7. Absent the assistance of an economist or other expert in the area of accounting, the jury cannot determine the accurate cost of Plaintiff's life care plan if solely relying on the life

care plan or Dr. Miranda's testimony. Dr. Miranda's nominal value opinions cannot withstand scrutiny under the *Robinson* factors as his nominal value opinions fail to account for inflation, discounts, and other "time value of money" factors, his opinions have an extremely high rate of potential error. *See Robinson*, 923 S.W.2d at 557. While Dr. Miranda may accurately identify the cost of certain medical treatment modalities today, these nominal value estimates are plainly erroneous and unreliable insofar they purport to identify what the same treatment modality will cost over the course of the next 48 years.

Further, by comparing the rate of inflation as applied to the costs of medical treatment over the past five (5) years, the Court will also see that Dr. Miranda's nominal value opinions also fail the testability *Robinson* factor. Between 2013 and 2017, the costs of medical care in an average U.S. city experienced an average inflation rate of 2.7% per year. *Consumer Price Index, Calendar Year Historical, 2013-2017*, UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS,

https://www.bls.gov/regions/southwest/data/consumerpriceindexcyhistorical_southwest_table.htm (last visited April 27, 2018). Given this average rate of inflation over the past five (5) years, it is apparent that the costs of medical care will continue to vary each and every year. *Id.* Because Dr. Miranda's nominal value opinions fail to account for the variability in the costs of medical care they are patently unreliable and will not assist the jury. Dr. Miranda's nominal value opinions do not account for the time value of money and are thus missing an essential piece of analysis. *See Ex. "A"* at p. 1-14; *see also Ex. "C"* at 59:4-18. Plaintiff did not timely designate any expert to proffer an opinion reducing Dr. Miranda's nominal value calculations into their present or future value. *See Ex. "D"*.

Since Dr. Miranda is not qualified to render an opinion that properly accounts for the time value of money per his own testimony (*See Ex. "C"* at p. 97:17-20), his opinions do not reliably identify the true cost of Plaintiff's medical treatment in the future when those costs are actually incurred. Therefore, Defendant moves this Court to exclude Dr. Miranda's testimony and opinions due to the analytical gap created by his failure to account for the time value of money. As a result, Defendant moves this Court to exclude the opinions and testimony of Dr. Miranda because they are unreliable under the *Robinson* factors and will not assist the jury in determining the cost of Plaintiff's future medical treatment.

C. Dr. Miranda's Opinions Are Inadmissible Legal Conclusions.

Statements of advocacy and legal conclusions do not assist the factfinder and are inadmissible. *Am. Home Assur. Co. v Cat Tech, LLC*, 717 F.Supp.2d 672, 681 (S.D. Tex. 2010) (citing *Snap-Drape v. Comm'r of Internal 13 Revenue*, 98 F.3d 194, 197–98 (5th Cir. 1996)). The court may exclude expert testimony that usurps the role of the judge or jury by proffering legal opinions or conclusions. *Fisher v. Halliburton*, No. H-06-1168, 2009 WL 5216949, at *2 (S.D. Tex. Dec. 21, 18, 2009) (citing *Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997)). The burden of proving the admissibility of an expert's testimony rests on Plaintiffs as the party offering the expert as a witness. *See Bocanegra v. Vicmar Services*, 320 F.3d 581, 585 (5th Cir. 2003). [I]t does not help the jury for an expert to give testimony that 'states a legal standard or draws a legal conclusion by applying law to the facts,'...because it 'supplies the jury with no information other than the witness's view of how the verdict should read...' *U.S. v Offill*, 666 F.3d 168, 175 (4th Cir. 2011).

Dr. Miranda included in Plaintiff's life care plan that the conditions of post-traumatic headaches; post-traumatic cervical radiculopathy; and post-traumatic disc herniations at C5-6, C7-

T1, and T1-2 are causally related to the underlying incident. *See Ex. "A"* at p. 7. In providing this opinion, Dr. Miranda does not provide any scientific or technical methodology or reasoning for such conclusions. *See id.* He simply draws legal conclusions from particular case facts/verbal history without providing an actual mechanism of injury that caused Plaintiff's conditions. *See Offill*, 666 F.3d at 175. During his deposition, when given an opportunity to explain the methodology behind or approach to reaching his ultimate opinions, Dr. Miranda continuously referenced Plaintiff's verbal history and portions of her medical records but he could not articulate how the conditions were specifically caused by the fall as opposed to her prior car accidents and prior assault. Dr. Miranda could not provide specific scientific or technical bases to support his opinions regarding causation of Plaintiff's medical conditions. *See Ex. "C":* at 32:8 – 40:25, 95:10-14. Instead, he simply reiterates conclusory statements regarding his opinion that Plaintiff's conditions were caused by the underlying incident. *See id.* Because Dr. Miranda's proposed testimony is solely compromised of statements of advocacy, bare facts and legal conclusions, it will not assist the trier of fact and is inadmissible. *See Am. Home Assur.*, 717 F.Supp.2d at 681 (citing *Snap-Drape*, 98 F.3d at 197–98).

III. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants respectfully request that the Court grant Defendants' Motion to Exclude the Expert Opinions of Hector Miranda-Grajales, MD, CLCP, and grant any other relief, at law or in equity, the Court deems appropriate.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

/s/ Brett H. Payne

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on this the 31st day of January 2020, a true and correct copy of the foregoing has been forwarded to all counsel of record.

/s/ Brett H. Payne

BRETT H. PAYNE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSE HILLS,
Plaintiff,

vs.

SAM'S EAST, INC., SAM'S CLUB, AND
WAL-MART, INC., FORMERLY KNOWN
AS WAL-MART STORES, INC.,
Defendants.

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Civil Action No. 6:18-cv-00301-ADA-JCM

**ORDER GRANTING DEFENDANTS' MOTION EXCLUDE THE EXPERT OPINIONS
OF HECTOR MIRANDA-GRAJALES, MD, CLCP**

On this day came on the be heard Defendants' Motion to Exclude the Expert Opinions of Hector Miranda-Grajales, MD, CLCP ("Defendant's Motion"), and the Court having reviewed the papers on file in this cause and having heard arguments of counsel, if such arguments were requested, it is of the opinion of the Court that Defendants' Motion should be GRANTED in its entirety and Dr. Miranda's opinions and testimony be EXCLUDED from trial.

- (1) It is therefore ORDERED, ADJUDGED and DECREED by the Court that Defendants' Motion is in all parts GRANTED;
- (2) It is therefore ORDERED, ADJUDGED and DECREED by the Court that the expert opinions, expert report, and any expert testimony of Dr. Hector Miranda-Grajales are hereby EXCLUDED from this suit in their entirety.
- (3) All relief not expressly granted or denied herein is hereby DENIED.

SIGNED this ____ day of _____, 2020.

JUDGE PRESIDING

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSE HILLS,
Plaintiff,

vs.

SAM'S EAST, INC., SAM'S CLUB, AND
WAL-MART, INC., FORMERLY KNOWN
AS WAL-MART STORES, INC.,
Defendants.

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Civil Action No. 6:18-cv-00301-ADA-JCM

**APPENDIX IN SUPPORT OF DEFENDANTS' MOTION EXCLUDE THE EXPERT
OPINIONS OF HECTOR MIRANDA-GRAJALES, MD, CLCP**

EXHIBIT A: Life Care Plan for Rose Hills – July 14, 2019

EXHIBIT B: Curriculum Vitae – Hector A. Miranda-Grajales, MD, CLCP

EXHIBIT C: Deposition of Hector A. Miranda-Grajales, MD, CLCP - January 16, 2020

EXHIBIT D: Plaintiff Rose Hill's Expert Disclosures – July 18, 2019

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

/s/ Brett H. Payne

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on this the 31st day of January 2020, a true and correct copy of the foregoing has been forwarded to all counsel of record.

/s/ Brett H. Payne

BRETT H. PAYNE

EXHIBIT A



Life Care Plan

Rose Hills

DOB: 08/12/81

Date of Report: 07/14/19

MD Certified Life Care Planner

4201 Bee Caves Road

Suite C-213

West Lake Hills, TX 78746

512-960-4717

Total Cost of LCP without Occipital Nerve Blocks: \$713,802

Total Cost of LCP with Occipital Nerve Blocks: \$1,261,770



Client: Rose Hills

Date of Report: 07/14/19

DOI: 10/13/16

Life Expectancy: 48 years.

Date of Evaluation: 7/11/19

Location of Evaluation:

4201 Bee Caves Rd, Suite C-213, West Lake Hills, TX 78746

Report completed by: Dr. Hector Miranda-Grajales, MD, CLCP

A handwritten signature in black ink, consisting of a stylized, cursive letter 'H' followed by a loop and a trailing line.

Introduction

A life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs. (International Academy of Life Care Planners, 2003. Established during the 2000 Life Care Planning Summit). A life care plan is designed, among many things, to help reduce medical complications and provide the best possible care for the unique needs of the particular patient involved.

The opinions, diagnoses, and conclusions mentioned in this report are based within a reasonable degree of rehabilitation and medical certainty. These opinions are based on my clinical experience as well as my training in physical medicine and rehabilitation, pain management, and life care planning. They are also based on the history provided, records reviewed, and examination findings. I reserve the right to modify my opinion should new information be made available to me.

Independent Medical Examination (IME) Report For Life Care Plan

In regards to: Rose Hills (examinee and patient)

Date of Birth: 8/12/81

Date of Loss: 10/13/16

Examiner: Hector Miranda-Grajales, MD

Specialty: Physical Medicine & Rehabilitation/Interventional Pain Management/Life Care
Planner

Date of IME: 7/11/19

Questionnaire

Home address: 1814 Buckskin Trl, Temple, TX 76502

Cell phone number: 254-421-0014

Age: 37

Race: Hispanic

Sex: Female

Dominant hand: Right

Work history: Hair stylist.

Prior accidents: She was involved in a car accident in 1999; she did not have chronic headaches or pain after that accident; she did not treat with a chiropractor, physical therapist, pain doctor, or surgeon after that accident. She was involved in another accident in 2000 or 2001. She was taken to the hospital by ambulance and was discharged home the same day. She developed lower back and right hip pain that resolved with chiropractic care. She did not have aggravated headaches after that accident. She did not treat with physical therapy, pain management, or surgeon after that accident. In 2002 she was assaulted and was punched in the nose and went to the ER. She did not have aggravated headaches, neck or back pain after that assault. She has not been assaulted, injured in a car accident, or in another slip and fall incident since the slip and fall of 10/13/16.

Has the patient ever had any disability prior to the accident in question?

Can the patient drive a car? Yes.

Sleeping habits: She wakes up at night with neck pain and headaches.

Social Activities: She reports with Emgality injections she can function more.

Activities of Daily Living: She is independent in ADLs.

Disclaimer

The examinee was informed that today's examination was to evaluate specific conditions pertinent to the accident in question; hence, information provided would not be confidential. Prior to the physical examination the patient was instructed not to perform any maneuver that might cause injury or exacerbation of symptoms, and to advise the examiner to avoid or immediately abort any such test.

Records Summary

Date	Provider	Note Type	Summary
10/13/16	-	Incident report	Mrs. Hills fell at the parking lot.
10/13/16	Baylor Scott & White	Progress note	She treated for whiplash injury, shoulder pain, neck pain.
10/17/16	Baylor Scott & White	Progress note	She treated for neck and wrist pain.
10/18/16	Baylor Scott & White	Progress note	She treated for neck and left wrist pain.
10/21/2016 - 1/9/17	Comprehensive Injury Treatment Services	Billing records	As of 10/21/16 she reported headaches.
10/31/2016 - 8/14/17	Baylor Scott & White	Progress note	She treated for neck pain and headaches.
11/14/2016 - 1/6/17	PT	Progress note	She treated for neck pain and headaches.
2/24/17	Pain Specialists of Austin	Progress note	She treated for pain in: neck, left shoulder, and left arm. She was diagnosed with cervical radiculopathy and a cervical ESI was recommended.
4/8/2019 - 11/29/17	Baylor Scott & White	Progress note	Mrs. Hills treated for post-traumatic headaches and neck pain. Her cervical MRI showed disc protrusions in: C5-6, C7-T1, T1-2.

Summary

HPI: Mrs. Hills is a 37 y/o woman who was injured in a slip and fall accident on 10/13/16 at Sam's Club parking lot. She did not hit her head. She landed on her hands and knees. She did not hurt at the time of the fall. She went home that day and when she woke up she "could not move her neck." She then went to the ER the same day of the slip and fall due to neck pain and headaches. She eventually developed numbness in her left 4th and 5th digits that persists to today. She treated with a chiropractor, but this treatment did not provide long term relief. She treated at Pain Specialists of Austin. Her pain doctor recommended injections of her neck. However, she has glaucoma and her ophthalmologist advised against doing any kind of steroid injections "because I can go blind." She did not proceed with cervical steroid injections.

Note, she was on gabapentin, but this did not help. She had an adverse reaction to Lyrica, she was "seeing things" while on that medication. Robaxin did not help much either. She is treating with Dr. Cabret for her headaches. She started Emgality injections for her migraines. She had a

history of headaches prior to the fall, since her mid 20s, but those headaches were resolved with over the counter medications and were not nearly as frequent and severe as they have become since the fall of 10/13/16.

Her post-traumatic headaches started after the fall of 10/13/16. They are constant; intensity: 6-9/10; her room is "blacked out" because bright lights make her headaches worse (also worsened with noise, and certain smells); she reports that Emgality, a prophylactic headache medication, helps bring down her headaches to 6/10. Without the Emgality, she would throw up from the nausea, and would be dizzy. Prior to taking Emgality she was taking anti-emetic medications daily, and now she only takes them once a week. She cannot take triptans because they make her drowsy. She takes Nortriptyline to sleep better. She takes dihydroergotamine 4mg/mL sprays for severe headaches at least twice a week. The headaches are throbbing, stabbing, shooting, tension-like. They're located on the back of her head and shoot to the front.

Her neck pain is constant; quality: throbbing, burning; it shoots down the left arm; intensity: 5-9/10; not associated with spasms; worsened with neck motion.

Review of Systems: as above.

Medications: Dihydroergotamine 4mg/mL sprays twice a week, Emgality 120mg/ml once a month, Reglan 10mg once a week, birth control, eye drops for glaucoma, Nortriptyline 40mg at night.

PMH: Glaucoma.

PSH: Tubal ligation.

Allergies: NKDA.

FH: Mother: diabetic, hypertension (alive); father: alive, has hypertension.

Social History: She does not smoke cigarettes or drink alcohol.

Physical Exam:

Constitutional: Patient is A & O X 3, normal in appearance, attention to hygiene and body habitus, in no apparent distress and coherent and cooperative.

Eyes: Examination of eyes reveals normal eyelids and conjunctivae; normal irises.

ENT/Mouth: Normal external ears and nose; normal hearing

Cardiovascular: no edema in extremities; palpable pedal pulses

Respiratory: normal respiratory effort

MSK:

ROM: Limited cervical ROM on extension and rotation due to pain.

Palpation: Tenderness to palpation in cervical paraspinal muscles.

Strength: 5/5 in upper and lower extremities.

Sensation: Intact to light touch in upper and lower extremities.

DTRs: 2+ in upper and lower extremities.

Neuro: Cranial nerves intact.

Analysis Of Findings

Diagnoses: The patient suffers from the following conditions, which are causally related to the slip and fall of 10/13/16:

1. Post-traumatic headaches.
2. Post-traumatic cervical radiculopathy.
3. Post-traumatic disc herniations in: C5-6, C7-T1, T1-2.

Clinical Status: It is within a reasonable degree of medical certainty that the patient's impairments are permanent.

Itemized Records

1. Pain Specialists of Austin - Records
2. BSW - bills
3. BSW - records
4. BSW - Supplement
5. CVS - meds
6. HEB - pt expense
7. Incident report
8. Plaintiff's First Amended Comp
9. Plaintiff's R.26 Initial Disclosures
10. Plt's First Amended Disclosures
11. Rose Hills - deposition
12. Walmart - meds 2
13. Walmart - meds

Cost Sources

1. Fair Health Online database was used to calculate medical services. The rates for care and services are from the claimant's geographical area.
2. Source for medications: Goodrx.com

Geozip: 76502

Year of benchmarks FAIR HEALTH: April 2019

Future care without ONBs

Item	Frequency	CPT	Rate
Neurology	3x per year	99214	\$ 212
*Dihydroergotamine	4mg/mL sprays twice a week	-	\$5,190 per year.
Emgality 120mg/pen	1 per month	-	\$8,280 per year.
Reglan	10mg once a week	-	\$4 per year.
Nortriptyline	40mg qhs	-	\$207 per year.
Cervical MRI	1x every 5 years	72141	\$ 2,954

*One spray has 0.5mg; it is sprayed twice in each nostril (2mg per use). 1 vial has 3.5 mL (14 mg per vial). At twice a week, she is using 4mg/week or 208 mg/year ($52 \times 4 = 208$). She will need 15 ($208/14=15$) vials per year. \$346 per vial. \$5,190 per year.

Future care with ONBs

Item	Frequency	CPT	Rate
Neurology	3x per year	99214	\$ 212
Bilateral greater and lesser occipital nerve blocks (ONB)	2x per year	64405x2, 64450x2	\$ 5,708
Dihydroergotamine	4mg/mL sprays twice a week	-	\$5,190 per year.
Emgality 120mg/pen	1 per month	-	\$8,280 per year.
Reglan	10mg once a week	-	\$4 per year.
Nortriptyline	40mg qhs	-	\$207 per year.
Cervical MRI	1x every 5 years	72141	\$ 2,954

Item	CPT	Rate
Greater ONB	64405	\$1,708
Lesser ONB	64450	\$1,146

Hector A. Miranda-Grajales, M.D., C.L.C.P.
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Board Certified Pain Management Specialist
Board Certified in Brain Injury Medicine
Certified Life Care Planner



Life Care Plan Tables

A life expectancy was obtained from the National Vital Statistics Report Volume 67, Number 7, November 13, 2018, Table 12. According to this source, Rose Hills's life expectancy is 48 years. The expected age of death is 85 years old.

DOB: 8/12/1981
AGE: 37
RACE: Hispanic

Client Name: Rose Hills
Date of Injury: 10/13/2016
Gender: Female

Projected Evaluations

Primary Disability: Post-traumatic: headaches, cervical radiculopathy.

Date of Preparation: 7/14/19

Item	Frequency and Duration of Need			Average Cost	Average Annual Cost	Years of Duration	Average Total Cost	Age At Start	Age At End	Comment
	Units	Every	# Years							
LCP	1	X	48	\$ -	\$ -	48	\$ -	37	85	
Totals				\$ -	\$ -		\$ -			

Projected Evaluations Average Unit Cost Total: \$
Projected Evaluations Average Annual Cost Total: \$
Projected Evaluations Average Cost Total: \$

Projected Treatment - without ONBsDOB: 8/12/1981
AGE: 37Client Name: Rose Hills
Date of Injury: 10/13/16
Date of Preparation: 07/14/19

Primary Disability: Post-traumatic headaches, cervical radiculopathy.

The expected age of death is 85 years old.

Item	Frequency and Duration of Need			Average Cost	Average Annual Cost	Years of Duration	Average Total Cost	Age At Start	Age At End	Comment
	Units	Every	# Years							
Neurology	3	X	1	\$ 212.00	\$ 636.00	48	\$ 30,528.00	37	85	
Dihydroergotamine	1	X	1	\$ 5,190.00	\$ 5,190.00	48	\$ 249,120.00	37	85	
Emgality	1	X	1	\$ 8,280.00	\$ 8,280.00	48	\$ 397,440.00	37	85	
Reglan	1	X	1	\$ 4.00	\$ 4.00	48	\$ 192.00	37	85	
Nortriptyline	1	X	1	\$ 207.00	\$ 207.00	48	\$ 9,936.00	37	85	
Cervical MRI	1	X	5	\$ 2,954.00	\$ 590.80	48	\$ 26,586.00	37	85	
Totals				\$ 16,847.00	\$ 14,907.80		\$ 713,802.00			

Projected Treatment - without ONBs Average Unit Cost Total: \$ 16,847.00
 Projected Treatment - without ONBs Average Annual Cost Total: \$ 14,907.80
 Projected Treatment - without ONBs Average Cost Total: \$ 713,802.00

Projected Treatment - with ONBsDOB: 8/12/1981
AGE: 37Client Name: Rose Hills
Date of Injury: 10/13/16
Date of Preparation: 07/14/19

Primary Disability: Post-traumatic headaches, cervical radiculopathy.

The expected age of death is 85 years old.

Item	Frequency and Duration of Need			Average Cost	Average Annual Cost	Years of Duration	Average Total Cost	Age At Start	Age At End	Comment
	Units	Every	# Years							
Neurology	3	X	1	\$ 212.00	\$ 636.00	48	\$ 30,528.00	37	85	
ONBs	2	X	1	\$ 5,708.00	\$ 11,416.00	48	\$ 547,968.00	37	85	
Dihydroergotamine	1	X	1	\$ 5,190.00	\$ 5,190.00	48	\$ 249,120.00	37	85	
Emgality	1	X	1	\$ 8,280.00	\$ 8,280.00	48	\$ 397,440.00	37	85	
Reglan	1	X	1	\$ 4.00	\$ 4.00	48	\$ 192.00	37	85	
Nortriptyline	1	X	1	\$ 207.00	\$ 207.00	48	\$ 9,936.00	37	85	
Cervical MRI	1	X	5	\$ 2,954.00	\$ 590.80	48	\$ 26,586.00	37	85	
Totals				\$ 22,555.00	\$ 26,323.80		\$ 1,261,770.00			

Projected Projected Treatment - with ONBs Average Unit Cost Total: \$ 22,555.00
 Projected Projected Treatment - with ONBs Average Annual Cost Total: \$ 26,323.80
 Projected Projected Treatment - with ONBs Average Cost Total: \$ 1,261,770.00

CURRICULUM VITAE
HÉCTOR A. MIRANDA-GRAJALES, MD, FAAPM&R, CLCP

March 2019

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LANGUAGES SPOKEN

- English
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MEDICAL LICENSES:

- Florida: ME107880
- Texas: Q4469
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CERTIFICATONS

- Board Certified in Brain Injury Medicine
 - December 1, 2016 – December 31, 2026
 - Certificate Number: 385
- Certified Life Care Planner (CLCP)
 - September 2015
 - Certified by the University of Florida, College of Public Health & Human Professions, Department of Behavioral Science & Community Health
- Board Certified in Pain Medicine
 - August 18, 2012 – December 31, 2022
 - Certificate Number: 1521
- Diplomate of American Board Physical Medicine and Rehabilitation
 - 7/1/2012 – 12/31/2022

- Certificate Number: 10537

PROFESSIONAL EXPERIENCE

September 3, 2013–

- Founded Medical Injury Rehabilitation Specialists, LLC
 - Medical Director and interventional pain management physician of this practice
 - 4201 Bee Caves Road, Suite C-213, West Lake Hills, TX 78746
 - 4611 NW 53rd Avenue, Gainesville, FL 32653
 - 404 Hall of Fame Drive, Lake City, FL 32055
- August 27, 2012 – August 26, 2013
 - Interventional pain management physician at the Institute of Pain Management
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EDUCATION

August 3, 2003 – June 15, 2007 University of Puerto Rico School of Medicine, Rio Piedras, Puerto Rico.

- M.D.
- Graduation June 15, 2007.
- Graduated *magna cum laude*.

August 16, 1999- February 16, 2003 University of Puerto Rico, Rio Piedras.

- B.S. General Sciences.
- Graduated February 16, 2003.
- Graduated *magna cum laude*.

POSTGRADUATE TRAINING

July 1, 2011-June 30, 2012

- Fellowship training in Anesthesia ACGME accredited Pain Management at Beth Israel Medical Center in New York City, NY.

July 1, 2008-June 30, 2011

- Residency training in Physical Medicine and Rehabilitation at the University of Miami Miller School of Medicine.

July 1, 2007- June 30, 2008

- Internship in Internal Medicine at the Veterans Affairs Medical Center in San Juan, Puerto Rico.

HONORS/AWARDS/ACHIEVEMENTS

Residency

April 23, 2010

- Named Chief Resident of PM&R residency program.

Undergraduate

2002-03

- Who's who among students in United States colleges and universities.

1999-03

- Dean's List.
- Honor Roll student at University of Puerto Rico, Rio Piedras.

POSTERS & PUBLICATIONS

2013

- **Miranda-Grajales H., Hao J, Cruciani R.** False Sense of Safety by Daily QTc Interval Monitoring During Methadone IVPCA Titration in a Patient with Chronic Pain. *Journal of Pain Research*; May 2013;6 375-378.

PROFESSIONAL ASSOCIATION MEMBERSHIPS

2015

- Member of American Medical Association
- Member of Texas Medical Association
- Member of American Academy of Physical Medicine & Rehabilitation
- Member of the International Association of Rehabilitation Professionals

False sense of safety by daily QTc interval monitoring during methadone IVPCA titration in a patient with chronic pain

Hector Miranda-Grajales
Joy Hao
Ricardo A Cruciani

Department of Pain Medicine and
Palliative Care, Beth Israel Medical
Center, New York, NY, USA

Abstract: It has been proposed that some deaths attributed to methadone are related to prolongation of the QTc interval; however, there are no clear recommendations on electrocardiogram (ECG) monitoring in patients undergoing intravenous methadone infusion. This is a report on a patient receiving methadone intravenous patient-controlled analgesia titration for the treatment of chronic pain. Initially, her daily ECGs showed QTc intervals within normal limits; however, she experienced a rapid increase in QTc interval from 317 ms to 784 ms within a 24-hour period after methadone had been discontinued for excessive sedation. QTc interval greater than 500 ms is considered to be high risk for the fatal arrhythmia Torsades de Pointes. Daily ECGs did not detect a gradual increase in the QTc interval that would have alerted the medical staff of the need to decrease or stop the methadone before reaching a prolonged QTc interval associated with cardiotoxicity. In selected cases where aggressive methadone titration is required, more intensive monitoring, such as telemetry or ECG determinations every 12 hours, might help detect changes in QTc interval duration that might otherwise be missed by daily ECG determinations.

Keywords: methadone, QTc prolongation, opioids, opioid side effects, IVPCA methadone

Background

The use of methadone for the management of chronic pain has increased in the last decade, as has the number of the deaths attributed to its use.¹ Methadone is a chiral mixture with a variable metabolism rate² that contributes to its unpredictable half-life (ranging between 15 and 150 hours), which can lead to drug accumulation and potential cardiac toxicity.¹ Methadone and other opioids, including oxycodone,³ can block delayed potassium rectifying currents (I_{Kr}), thus interfering with the repolarization of the conductive tissue of the heart⁴ and predisposing to Torsade de Pointes (TdP), a fatal ventricular arrhythmia. On electrocardiogram (ECG), prolonged depolarization manifests as QTc interval prolongation.⁵ An acceptable QTc interval upper limit has been proposed to be 430 and 450 ms for males and females,⁶ respectively, while values beyond 500 ms are considered to be high risk for TdP irrespective of sex.⁶

Although the use of intravenous (IV) methadone in the terminally ill population is considered to be safe,⁷ and the QTc prolongation reported by Kornick et al was attributed to the preservative chlorobutanol,⁸ many reports suggest that methadone itself may prolong the QTc interval in a dose-dependent manner.⁴ Furthermore, coadministration of certain medications may increase the risk of cardiotoxicity, for example, drugs that have the potential to prolong the QTc interval,⁹ such as certain antibiotics or antiarrhythmic agents, or drugs that may compete with methadone as substrates for the cytochrome P450 isoenzymes 3A4, 2D6, and 2B6,¹⁰ such as certain antidepressants, resulting in

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elevated methadone plasma levels. To address the risk of cardiotoxicity, some authors have advocated serial ECGs to monitor the QTc interval duration,¹¹ but the recommendations on frequency of monitoring and medication dose at which the ECG should be done are controversial¹² and range from "ECG is never necessary" to perform ECG "in every patient."¹³

Objective

To promote awareness that daily ECG monitoring during IV patient-controlled analgesia (PCA) with methadone may not be sufficient to anticipate a rapid prolongation of the QTc interval.

Methods and findings

The patient was a 50-year-old woman with chronic abdominal pain for over 10 years due to lupus vasculitis who during hospitalization for opioid rotation, experienced QTc prolongation beyond 500 ms during rapid IV methadone titration in less than 24 hours. The patient's pain had not been managed to satisfaction as an outpatient, and admission for IV opioid titration was recommended. At the time of admission to the Pain Service Inpatient Unit, Beth Israel Medical Center, New York, NY, USA, the patient's medications included morphine sulfate 150 mg intramuscular (IM) every 4 hours and meperidine 75 mg IM every 8 hours, and her pain score was 10/10. During hospitalization, the patient underwent trials with intravenous patient controlled analgesia (IVPCA) hydromorphone, morphine, and fentanyl, which did not alleviate the pain or cause significant side effects and had to be discontinued. Afterwards, the patient received IV methylprednisolone and ketamine infusion, and both were ineffective. After a baseline ECG that showed a QTc interval of 449 ms, an IVPCA methadone trial was initiated. The 12-lead ECG was obtained with a MAC 5000 machine (GE Medical Systems, Milwaukee, WI, USA). The QT interval was measured manually by a board-certified cardiologist. The interval was corrected for heart rate using the Bazett formula:⁶

$$QTc = QT/\sqrt{RR}.$$

QTc prolongation was defined as intervals longer than 430 ms for males and 450 ms for females.¹⁴ During the first 7 days of methadone IVPCA titration, the QTc interval duration ranged from 416 to 449 ms (Table 1). On the morning of day 8, the QTc interval was 317 ms (Table 1). That night, due to excessive sedation, the IVPCA methadone was discontinued, so the patient received only 184 mg during the 24-hour period. During this episode, the patient was easily aroused; oriented to self, time, and space; had stable vital signs (BP

134/82; HR 62; RR 12); and had no evidence of arrhythmia (although an ECG was not done). The next morning, a repeat ECG showed a QTc interval of 784 ms (12 hours after the methadone IVPCA had been discontinued). At that point, the sedation was resolved, there was no evidence of withdrawal symptoms, and the electrolytes were within the normal range (K^+ 4.3, Ca^{2+} 9.3, Mg^{2+} 2.0, aspartate aminotransferase (ALT) 17, alanine aminotransferase (AST) 16 for a reference range of 3.7–5.2 mEq/L, 8.5–10.9 mg/dL, 1.7–2.2 mg/dL, 8–37 IU/L, and 10–34 IU/L respectively). The patient remained on nortriptyline 25 mg in the morning and afternoon and 50 at bed time (plasma level of 81 for a therapeutic range of 70–170 ng/mL), and baclofen 10 mg every 8 hours that she had been taking at the same dose for several months before this admission. It is worth noting that no new medications that could prolong the QTc interval or interfere with methadone metabolism were initiated at this admission, (for a list of medications that can prolong the QTc interval, visit <http://www.torsades.org>). Twenty-four hours later, the QTc interval duration was 476 ms, and the patient reported a pain score of 8/10. At this time, methadone was resumed as an oral formulation at half the dose of that before discontinuation (30 mg three times a day), which is a dose that had not caused significant QTc interval prolongation a few days earlier. In addition, the patient received hydromorphone 8–16 mg IV every 3 hours as needed to provide additional pain relief and to control withdrawal symptoms. This combination of medications provided inadequate pain relief, as the patient reported pain scores ranging from 6/10 to 10/10.

On day 15, in view of the poor response obtained with IV and oral opioids (the patient continued to report pain scores of 10/10), methadone was discontinued, and a trial of neuroaxial analgesia that included hydromorphone, bupivacaine, clonidine, baclofen, and midazolam was conducted. At day 21, the patient continued reporting pain scores that ranged between 8/10 and 10/10, and the neuroaxial analgesia trial was discontinued. At this point, oral methadone was titrated, up to 30 mg four times a day, and the patient also received transdermal fentanyl 300 µg/hour every 72 hours (dose based on the IVPCA fentanyl trial that the patient had had earlier during this hospitalization). Hydromorphone 8–16 mg every 3 hours as needed was continued to manage breakthrough pain and withdrawal symptoms. On day 24, the patient was discharged on methadone and transdermal fentanyl, with the addition of meperidine IM and morphine IM, which the patient had used for many years, but now at lower doses and with longer intervals between administrations. At discharge, her pain score was 4/10 and the QTc interval

Table 1 Methadone dose over time and daily ECG

Day of IVPCA	Methadone			QTc interval duration (ms)
	Total methadone oral dose (mg/24 h)	IVPCA methadone dose (continuous rate plus demand, mg/24 h) and conversion to PO equivalency dose (IV to PO conversion factor = 2)	Total methadone dose in PO equivalent (mg/24 h)	
Day 1	40	$28.8 \times 2 = 57.6$	97.6	449
Day 2	60	$58.8 \times 2 = 117.6$	177.6	445
Day 3	60	$94.8 \times 2 = 189.6$	249.6	430
Day 4	60	$151.6 \times 2 = 303.2$	363.2	426
Day 5	60	$121 \times 2 = 242$	302	416
Day 6	60	$126.9 \times 2 = 253.8$	313.8	420
Day 7	60	$137.3 \times 2 = 274.6$	334	429
Day 8	60	$62 \times 2 = 124$ (12 h)	184	317
Day 9	20	—	20	784
Day 10	120	—	120	476
Day 11	120	—	120	486
Day 12	120	—	120	477
Day 13	120	—	120	495
Day 14	120	—	120	471
Day 15	None	—	0	485
Day 16	None	—	0	432
Day 17	None	—	0	451
Day 18	None	—	0	418
Day 19	None	—	0	437
Day 20	None	—	0	421
Day 21	30	—	30	404
Day 22	60	—	60	443
Day 23	90	—	90	448
Day 24	90	—	90	467

Notes: QTc duration versus total methadone dose. The first ECG was done to obtain a QTc interval duration baseline. Thereafter, daily ECGs were obtained to monitor the duration of the QTc while the IVPCA methadone titration was conducted. The total methadone dose was defined as the addition of the constant infusion rate, the demand dose, and the IV equivalent oral dose, in 24-hour periods. The methadone IV to oral conversion ratio was 1:2.

Abbreviations: ECG, electrocardiogram; IV, intravenous; PCA, patient-controlled analgesia; PO, per oral.

was 437 ms. We recognize that meperidine IM long-term use is not recommended, and the potential buildup of the metabolite normeperidine can cause seizures. However, the patient expressed anxiety at the prospect of discontinuing this medication, which she had been taking for many years without experiencing significant side effects. Therefore, we developed a plan to gradually switch from the use of injectable meperidine to injectable morphine, with eventual plan to transition to oral medications. After discharge, the patient was evaluated weekly in an outpatient setting for 1 month, at the end of which her pain score was 4/10, and the QTc interval was 372 ms. Four months later, the overall injectable medications had been reduced by an additional 25% and her QTc interval duration was 410 ms.

Discussion

An ECG is a good screening tool for cardiac arrhythmias;¹⁴ however, in this case, daily ECGs were not sufficient to guide

dosing during rapid methadone titration as a gradual prolongation of the QTc interval was not observed. Instead, the QTc interval jumped from what is considered to be low risk for cardiotoxicity to over 700 ms in less than 24 hours, putting the patient at high risk for fatal arrhythmias such as TdP. Since the methadone was preservative-free, and medications that can be substrates of the cytochrome P450 isoenzymes 3A4, 2D6, and 2B6, or those that can block the I_{Kr} , were not initiated during this hospitalization, it is likely that the observed prolongation was due to a dose-dependent effect of methadone on the QTc interval caused by drug accumulation. In this report, daily ECGs did not detect a gradual increment of the QTc interval duration that would have guided clinical decisions to either decrease or stop the drug before the QTc interval exceeded 500 ms. Therefore, while daily ECGs may be useful, this should not be the only method used to guide clinical decisions regarding dose adjustments of methadone, as a normal QTc interval can give a false sense of safety.

Telemetry monitoring or ECG determinations every 12 hours should be considered in cases in which aggressive titration of IV methadone is elected. However, since methadone plasma levels were not measured in this case, the conclusions of this report cannot be generalized.

Disclosure

Ricardo A Cruciani is on the speaker board for ENDO, Covidien, and Pfizer; has been coinvestigator in research funded by Ameritox; has organized CME courses funded by Grupo Ferrer; and has been in the advisory board for Depomed and Janssen Pharmaceuticals. The authors report no other conflicts of interest in this work.

References

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Dr. Miranda-Grajales Testimony Experience

EW = Expert Witness; TP = Treating Physician LCP = Life Care Plan

Depos	Date	Location	Court style	Case#	Name of c	Retained b	Payments receiv	Insurance comp	Defense at	Was it videographed?
1.	EW	9/24/2013	4611 NW 53	Circuit court	12-2012	Budnik, Ar	Tommy De \$1000 for the de	Statefarm	Jason Fanc	No
2.	TP	-	136 SW Nass	Circuit court	11-327-0	Staley, Raf	Tommy De \$1000 for the de	Statefarm	-	No
3.	EW	9/2/2014	4611 NW 53	Circuit court	13-130-0	Bonesio, G	Tommy De \$1,000 for recor	Statefarm	Raymond F	No
4.	TP	2/24/2015	136 SW Nass	IN THE CIRCL	13-474-0	Proveaux, T	Tommy De \$1,500 for 1 hol	-	Harris Brov	Yes
5.	EW	5/11/2016	4201 Bee Cay	-	M-20106	Kenneth B	Carlson La \$3,000	Non-subscriber	Bill Ashcra	Yes
6.	TP	5/26/2016	4202 Bee Cay	Circuit court	01-2014	Brian Coh	Defense: R \$1,000	-	Robert Tud	No
7.	LCP	5/24/2016	4203 Bee Cay	IN THE DISTR	CAUSE N	Sharon Pre	Plaintiff: Jf \$3,275	-	Eric W. Hin	Yes
8.	EW	5/31/2016	4201 Bee Cay	-	M-20106	Kenneth B	Carlson La \$1,750 for	Non-subscriber	Bill Ashcra	Yes
9.	LCP	6/20/2016	Carlson Law Firm Office	11606 N IH	Melissa Bi	Carlson La	\$2,500	-	-	Yes
10.	TP	6/30/2016	4201 Bee Caves Rd, Suite C-213,	W4	Vanneter, Aaron	Baker	-	-	-	Yes
11.	LCP	9/8/2016	4201 Bee Cay	District Court	NO. 201	Edward Ya	Plaintiff: Jd \$10,500; \$8,000	James Christi	Nathan Ryl	Yes
12.	LCP	9/16/2016	111 Congres	District Court	CAUSE N	Roel Rodri	Defense: A When I was beir	Plaintiff: Collen	Defense: A	Yes
13.	LCP	10/14/2016	Omni Hotel	District Court	NO. 201	Bulmaro F	Plaintiff: E \$4,000 for life c	SCS Constructio	J. Hans Bar	No
14.	LCP	11/11/2016	111 Congres	99th District	2014-51	William Ja	Plaintiff: C \$4,000 for life c	C&D Waste Ltd.	Elliott V Nixon; CRENSHAW, DUPREE, & MILLAM	
15.	TP	2/7/2017	The Carlson	District Court	Case N	Zafar Al-de	Plaintiff: Jd My bill is \$2,500	Joshua Holley	Robert House	
16.	EW-IM	3/31/2017	Thompson, C	District Court	Case N	Nancy Pet	Michael D \$1,500 for IME a	-	Christopher Rigler, Jennifer Aufrecht	
17.	LCP	4/27/2017	1220 Colorad	IN THE 70TH	CAUSE N	Michael D	Jonathan C \$5,000 for life c	-	Christopher Slayton	
18.	EW-IM	1/3/2017	901 MoPac E	IN THE COUN	CAUSE N	Wendy Jo	Terrence D \$2,500 for depo	-	-	Yes
19.	LCP	7/26/2017	11606 N IH-35	IN THE DISTR	CAUSE N	Doyle "Par	Todd Kelly \$6,500 for LCP; \$	-	William Ch	No
20.	LCP	5/3/2017	1717 N IH-35	American Ar	Case No	Corrin San	Rob Ranco \$7,650 for LCP; \$	-	Mark Giltn	No
21.	LCP	8/18/2017	Wright & Gre	American Ar	Case No	Corrin San	Rob Ranco \$7,650 for LCP; \$	-	Mark Giltn	No
22.	LCP	9/25/2017	812 San Antd	IN THE DISTR	CAUSE N	James Sco	Parker Pol \$4,000 for LCP; \$	-	Jeff Otto	
23.	LCP	9/21/2017	808 W Ave, A	IN THE DISTR	Case N	Ricardo G	Justin Dem \$4,000 for LCP; \$	-	-	No
24.	LCP	10/12/2017	11940 Jolivi	IN THE DISTR	NO. D-1	CHARISSA	Lee, Gobe \$4,000 for repon	-	Ryan Bueche, James Hicks	
25.	LCP	11/8/2017	Legal County	IN THE DISTR	CAUSE N	James Sco	Parker Pol \$4,000 for LCP; \$	-	Jeff Otto	
26.	LCP	12/5/2017	US LegalSupp	IN THE DISTR	CAUSE N	SANDRA A	Steve Dum \$5650 for LCP; \$	-	Peter C. Bid	Yes
27.	LCP	1/12/2018	Veritext Lega	IN THE DISTR	CAUSE N	KATHLEEN	Darrell Kei \$10,750 for LCP; \$	-	James Stou	No
28.	LCP	1/26/2018	701 Brazos S	AMERICAN A	NO. 01-1	Debra Bail	Charles Ca \$6,830 for LCP; \$	-	Mark Carr	Yes
29.	EW	1/26/2018	Calle Resolud	US District C	Federal: Janet Hern	Yadira Mai	\$975 for phone	-	Doris Quin	No
30.	LCP	2/20/2018	Federal Court	UNITED STA	Case 201	POWER BA	Gray Wm \$8,200 for LCP; \$	-	Michael R	Yes
31.	LCP	2/26/2018	Travel Court	IN THE DISTR	NO. D-1	CHARISSA	Lee, Gobe \$4,000 for repon	-	Ryan Bueche	

32.	LCP	3/8/2018	700 Brazos St	In the district	Cause N4	Marshall S	Todd Kelly	\$6,750 for LCP; \$-		David Criss	-
33.	LCP	6/4/2018	1100 Oldfield	In the district	Cause N4	Stephen B	Steven B	\$4,000 for LCP; \$-			
34.	LCP	6/26/2018	11606 N Inte	In the district	Cause N4	Agueda C	Scott Crivd	\$4,000 for LCP; \$-		Douglas Gd	No
35.	EW	7/17/2018	248 Addie Rd	In the county	Cause N4	Kendrick S	Jeff Villarr	\$500 for a caused	State Farm	Edward F.	Yes
36.	LCP	9/19/2018	701 Brazos St	In the district	CAUSE N4	Stephen B	Nielsen Lai	\$4,000 for LCP; \$-		Alexandra	No
37.	LCP	9/26/2018	701 Brazos St	District Court	Cause N4	Andrew R	Robert Rai	\$5,000 for each	State Farm	Ron Clark	No
38.	LCP	10/24/2018	1502 W Ave.	District Court	CAUSE N4	JOSEPH M	Joe Lopez	\$6,200 for LCP a	KELLY-MOORE F	Jay R. Dow	No
39.	LCP	10/25/2018	7703 North L	District Court	CAUSE N4	LEIA MON	Michael Tu	\$6,750 for LCP a	CHAE CHAI	MATT MOI	No
40.	LCP	11/28/2018	701 Brazos St	District Court	Cause N4	Perry Deni	Michael Br	\$5,000 for LCP r		Ryan Rogel	Yes
41.	LCP	1/9/2019	701 Brazos St	DISTRICT CO	CAUSE N4	Jami Jones	Geoffrey N	\$6,200 for LCP a		Paul Garcia	Yes
42.	LCP	2/21/2019	701 Brazos St	DISTRICT CO	CAUSE N4	GABRIEL R	Brian H. Ch	\$4,000 for LCP a	HEB	D. Alan Em	Yes
43.	LCP	2/22/2019	10 Market St	SUPREMACY	Index N4	Michael B	Michael B	\$4,000 for LCP	Liberty Mutual	Marco Stett	No
44.	LCP	3/11/2019	701 Brazos St	UNITED STA	Civil Acti	DOMENIC	Mark Perk	\$5	12,500	Gregorio,	Yes.
45.	LCP	3/25/2019	701 Brazos St	In the district	CAUSE N4	Stephen B	Nielsen Lai	\$4,000 for LCP; \$-		Alexandra	No
46.	LCP	5/30/2019	405 Martin L	IN THE DIST	CAUSE N4	DAVID M	LINDSAY R	\$4,000 for LCP; \$-		KENNETH H	No
47.	LCP	6/13/2019	7703 North L	IN THE DIST	CAUSE N4	DAVID M	Christophd	\$6,750 for LCP; \$-	GARRISON PRO	ROBERT F. SCHEIHING	
48.	LCP	6/21/2019	Court Report	JUDICIAL WC	JWA No	Edwin Veg	Juan C. He	\$4,000; \$2,500 f		Travis R. B	Yes

EW = Endoc Wtloss; TP = Tissue Protein; LCP = Lipid Core Protein

[illegible]



Medical Injury
Rehabilitation
Specialists

Hector Miranda-Grajales, M.D.

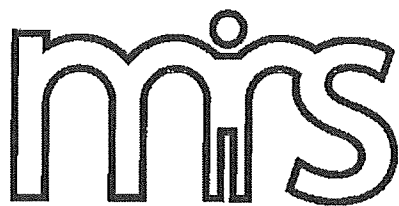
4201 Bee Caves Rd., Suite C-213
West Lake Hills, TX 78746
Tel: 512-960-4717 / Fax: 855-868-9882

Date: 7/17/19

In accordance to the rules for Federal Court, section (vi) *statement of the compensation to be paid for the study and testimony in the case:*

I billed and collected \$7,200 for the life care plan on Rose Hills. I will bill \$2,500 for a deposition lasting 4 hours or less and \$5,000 lasting more than 4 hours. I will bill \$5,000 for trial.

Hector Miranda-Grajales, M.D.



Medical Injury
Rehabilitaion
Specialists

MIRS - Hector Miranda Grajales, MD
512-960-4717

4201 Bee Cave Rd
West Lake Hills, Texas
78746
United States

Billed To
Julie L. Peschel
Carlson Law Firm
2010 SW HK Dodgen Loop, Suite 201
Temple, TX
76504

Date of Issue
06/29/2019

Invoice Number
0000062

Amount Due (USD)
\$0.00

Due Date
07/01/2019

Description	Rate	Qty	Line Total
Hills, Rose - LCP with rush fee	\$7,200.00	1	\$7,200.00
Hills, Rose - LCP with rush fee			
	Subtotal		7,200.00
	Tax		0.00
	Total		7,200.00
	Amount Paid		7,200.00
	Amount Due (USD)		\$0.00

EXHIBIT B

CURRICULUM VITAE
HÉCTOR A. MIRANDA-GRAJALES, MD, FAAPM&R, CLCP

March 2019

4201 Bee Caves Rd.,
Suite C-213
West Lake Hills, TX 78746-6458

email:
hmirandamd@mdclcp.net
hmirandamd@medinjury.net
Office: (512) 960-4717
Fax: 855-868-9882

LANGUAGES SPOKEN

- English
- Spanish

MEDICAL LICENSES:

- Florida: ME107880
- Texas: Q4469
- New York: 262463-1
- California: C149232

CERTIFICATONS

- Board Certified in Brain Injury Medicine
 - December 1, 2016 – December 31, 2026
 - Certificate Number: 385
- Certified Life Care Planner (CLCP)
 - September 2015
 - Certified by the University of Florida, College of Public Health & Human Professions, Department of Behavioral Science & Community Health
- Board Certified in Pain Medicine
 - August 18, 2012 – December 31, 2022
 - Certificate Number: 1521
- Diplomate of American Board Physical Medicine and Rehabilitation
 - 7/1/2012 – 12/31/2022

- o Certificate Number: 10537

PROFESSIONAL EXPERIENCE

September 3, 2013 –

- * Founded Medical Injury Rehabilitation Specialists, LLC
 - o Medical Director and interventional pain management physician of this practice
 - 4201 Bee Caves Road, Suite C-213, West Lake Hills, TX 78746
 - 4611 NW 53rd Avenue, Gainesville, FL 32653
 - 404 Hall of Fame Drive, Lake City, FL 32055

* August 27, 2012 – August 26, 2013

- o Interventional pain management physician at the Institute of Pain Management
 - * 1325 San Marco Blvd. Suite 4A, Jacksonville, FL, 32207; tel: 904- 306- 9860 fax: 904-306-9864; Business address: PO Box 57970 Jacksonville, FL 32241-7970
 - * 4243 Sunbeam Rd., Jacksonville, FL, 32207; tel: 904-264-5661
 - * 1210 Kingsley Ave., Orange Park, FL 32073; tel: 904-264-5661

EDUCATION

August 3, 2003 – June 15, 2007 University of Puerto Rico School of Medicine, Rio Piedras, Puerto Rico.

- o M.D.
- o Graduation June 15, 2007.
- o Graduated *magna cum laude*.

August 16, 1999- February 16, 2003 University of Puerto Rico, Rio Piedras.

- o B.S. General Sciences.
- o Graduated February 16, 2003.
- o Graduated *magna cum laude*.

POSTGRADUATE TRAINING

July 1, 2011-June 30, 2012

- o Fellowship training in Anesthesia ACGME accredited Pain Management at Beth Israel Medical Center in New York City, NY.

July 1, 2008-June 30, 2011

- Residency training in Physical Medicine and Rehabilitation at the University of Miami Miller School of Medicine.

July 1, 2007- June 30, 2008

- Internship in Internal Medicine at the Veterans Affairs Medical Center in San Juan, Puerto Rico.

HONORS/AWARDS/ACHIEVEMENTS

Residency

April 23, 2010

- Named Chief Resident of PM&R residency program.

Undergraduate

2002-03

- Who's who among students in United States colleges and universities.

1999-03

- Dean's List.
- Honor Roll student at University of Puerto Rico, Rio Piedras.

POSTERS & PUBLICATIONS

2013

- **Miranda-Grajales H., Hao J, Cruciani R.** False Sense of Safety by Daily QTc Interval Monitoring During Methadone IVPCA Titration in a Patient with Chronic Pain. *Journal of Pain Research*; May 2013;6 375-378.

PROFESSIONAL ASSOCIATION MEMBERSHIPS

2015

- Member of American Medical Association
- Member of Texas Medical Association
- Member of American Academy of Physical Medicine & Rehabilitation
- Member of the International Association of Rehabilitation Professionals

EXHIBIT C

ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ROSE HILLS,) CIVIL ACTION NO:
Plaintiff,) 6:18-cv-00301-
) ADA-JCM
VS.)
) JURY TRIAL
SAM'S EAST, INC., SAM'S CLUB,) REQUESTED
AND WAL-MART, INC., formally)
known as WAL-MART STORES,)
INC.,)
Defendants.)

15 BE IT REMEMBERED that the videotape
16 deposition of HECTOR MIRANDA-GRAJALES, M.D.
17 duly sworn, was taken on January 16, 2020, at
18 U.S. Legal Support, 701 Brazos Street, Suite
19 380, Austin, Texas 78701, between the times of
20 3:18 p.m. and 5:34 p.m., before Noelle Rose
21 Nevius, Court Reporter, reported by machine
22 shorthand, after which time the videotape
23 deposition was reduced to writing and set
24 forth as follows:

ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020

Pages 2..5

Page 2		Page 4	
1	A P P E A R A N C E S :	1	E X H I B I T S
2		2	
3		3	PAGE
4	FOR THE PLAINTIFF:	4	Exhibit 1 CD - Dr. HMG's Files 12
5	THE CARLSON LAW FIRM	5	
6	BY: JULIE PESCHEL, ESQUIRE	6	Exhibit 2 11/25/2016 Cervical Spine 50
7	2010 SW HK Dodgen Loop	7	MRI Record
8	Suite 201	8	
9	Temple, Texas 76504	9	Exhibit 3 The Legal Connection, Inc. 52
10	254-771-5688	10	Documents
11		11	
12		12	Exhibit 4 GoodRX Website Forms 54
13	FOR THE DEFENDANTS:	13	
14	WALTERS, BALIDO AND CRAIN, LLP	14	Exhibit 5 Fairhealth Form 71
15	BY: BRETT PAYNE, ESQUIRE	15	
16	9020 N. Capital of Texas Highway	16	Exhibit 6 Accuracy of Information Form 71
17	Building II, Suite 225	17	
18	Austin, Texas 78759	18	Exhibit 7 Baylor Scott & White Records 84
19	512-472-9000	19	
20		20	
21		21	
22	Videographer: Joe Bazan	22	
23		23	
24		24	
25		25	
Page 3		Page 5	
1	I N D E X	1	- - -
2		2	THE VIDEOGRAPHER: We are on the
3		3	record for the videotape deposition of
4	EXAMINATION OF HECTOR MIRANDA-GRAJALES, M.D. PAGE	4	Dr. Hector Miranda-Grajales taken on
5		5	Thursday, January 16, 2020. The time is
6	Mr. Payne.....5,91	6	3:18 p.m.
7	Ms. Peschel.....78,98	7	Will the court reporter please
8	Witness Signature Page.....100	8	swear in the witness?
9	Court Reporter's Certification Pg.....103	9	- - -
10		10	HECTOR MIRANDA-GRAJALES, M.D. was
11		11	called as a witness, and after having
12		12	been duly sworn to tell the truth,
13		13	testified as follows:
14		14	(Witness sworn)
15		15	- - -
16		16	DIRECT EXAMINATION
17		17	- - -
18		18	BY MR. PAYNE:
19		19	Q. Doctor, could you please state your full
20		20	name for the video record?
21		21	A. Hector Miranda-Grajales, but I go by
22		22	Dr. Miranda.
23		23	Q. And, Doctor, you -- well, what is your
24		24	occupation?
25		25	A. I'm a physical medicine -- I'm a doctor, and

**ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020**

Pages 6..9

Page 6	Page 8
<p>1 I practice in pain medicine, and physical medicine, 2 and rehabilitation. 3 Q. And so that Ms. Peschel doesn't have to do 4 it later, let me ask you to go through your 5 training and educational background. 6 A. Yes. So I went to Medical School at the 7 University of Puerto Rico School of Medicine four 8 years, and I did an internship at the VA San Juan 9 Medical Center in internal medicine. Then I did a 10 three-year program in physical medicine and 11 rehabilitation at the University of Miami. Then I 12 did a one-year fellowship in pain medicine in New 13 York at Beth Israel Medical Center. 14 Q. In what do you consider yourself to be an 15 expert in as far as offering testimony? 16 A. Physical medicine rehabilitation, pain 17 medicine, brain injury medicine, and life care 18 planning. 19 Q. All right. You do not consider yourself to 20 have expertise or be an expert who can testify as 21 to radiology issues; is that accurate? 22 A. I can. 23 Q. But do you consider yourself to be an 24 expert? 25 A. It depends on the situation. Yes.</p>	<p>1 Q. All right. Okay. And you feel comfortable 2 offering opinions about headache treatment from 3 your background and physical medicine and pain 4 management, but not in neurology; is that 5 accurate? 6 A. It's accurate to the sense that I'm not a 7 neurologist. I didn't complete a residency in 8 neurology. But again, one of my board 9 certifications is in brain injury of medicine, and 10 part of the brain injury is having posttraumatic 11 headaches. 12 Q. All right. Doctor, to the extent that my 13 questions call for an expert opinion, a medical 14 expert opinion, would you give me that opinion 15 based on a reasonable degree of medical 16 probability? 17 A. Yes, sir. 18 Q. If you cannot answer a question and are not 19 comfortable answering a question based on a 20 reasonable degree of medical probability, will you 21 let us know? 22 A. Yes, sir. 23 Q. All right. And if you feel that a topic or 24 a question is outside of your area of expertise, 25 will you likewise let us know?</p>
Page 7	Page 9
<p>1 Q. Would you defer to a radiologist if your 2 opinion was different than a radiologist? 3 A. It's possible. 4 Q. All right. What about orthopedics? Do you 5 consider yourself to be an expert in orthopedics? 6 A. Orthopedics is a board term. So I am an 7 expert in certain regards of orthopedic profession, 8 but I'm not a surgeon, you know. 9 Q. Where or in what parts do you consider 10 yourself to have expertise in orthopedics? 11 A. The musculoskeletal system, including the 12 spine. 13 Q. All right. And I guess to use your 14 qualifications, you do not consider yourself to be 15 an expert in orthopedic surgery; true? 16 A. Correct. 17 Q. Would it also be true that you do not 18 consider yourself to be an expert in neurology? 19 A. I'm not a neurologist. That's correct. 20 Q. And so, you would agree you would not feel 21 comfortable offering an opinion, an expert opinion, 22 on neurology; is that accurate? 23 A. It depends, because I do treat headaches, 24 and I know this case involves headaches. So I feel 25 comfortable, you know, treating headaches.</p>	<p>1 A. Yes, sir. 2 Q. In this instance, you were hired by Ms. Rose 3 Hills' attorneys to prepare a life care plan; is 4 that true? 5 A. Yes, sir. 6 Q. You do not consider yourself to be a 7 treating physician of Ms. Hills. Accurate? 8 A. Correct. 9 Q. All right. You have never provided any 10 treatment to Ms. Hills; true? 11 A. True. 12 Q. Did you have an in-person meeting with 13 Ms. Hills? 14 A. Yes, sir. 15 Q. When did that occur? 16 A. Let me open up my report here. 17 Q. Of course. 18 A. I evaluated Ms. Hills on July 11, 2019. 19 Q. All right. So about six months ago? 20 A. Just about. Yeah. 21 Q. Okay. And what was the nature of your visit 22 with Ms. Hills on that occasion last July? 23 A. It was for a history interview, and physical 24 examination in relation to a life care plan. 25 Q. How long did that examination last?</p>

ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020

Pages 10..13

Page 10	Page 12
1 A. I'm going to guess about an hour.	1 entire file pertaining to this litigation?
2 Q. What did it entail?	2 A. Yes, sir.
3 A. History and physical exam.	3 Q. All right.
4 Q. Did it involve anything beyond a history and	4 MR. PAYNE: And, again, I marked
5 a physical examination?	5 that CD, or at least the envelope of the
6 A. No, sir.	6 CD, as Exhibit Number 1.
7 Q. You did not perform or have performed any	7 (Exhibit No. 1 was marked for
8 type of radiology testing; true?	8 identification.)
9 A. True.	9 BY MR. PAYNE:
10 Q. You did not perform or have performed any	10 Q. Of course, I only took a few minutes because
11 type of nerve conduction testing or anything of	11 we were running a little late to begin with, but I
12 that nature; correct?	12 didn't see any correspondences exchange between you
13 A. Correct.	13 and The Carlson Law Firm. Does such correspondence
14 Q. There would be no other testing that would	14 exist?
15 have been performed in connection with your visit	15 A. Yes, but it wasn't requested in the Duces
16 on July of 2019; true?	16 Tecum.
17 A. True.	17 Q. Okay. You don't consider that part of your
18 Q. It would have simply been a standard	18 file?
19 physical examination, as well as a conduction of	19 A. It wasn't requested, so, no.
20 her history; true?	20 Q. Okay. The request -- and I'll read it to
21 A. True.	21 you. Exhibit A, Duces Tecum number one, the
22 Q. And that was done at the request of	22 witness' entire file pertaining to this litigation.
23 Ms. Hills' legal counsel in this litigation matter;	23 You do not consider correspondences from the
24 true?	24 attorneys who hired you to be pertinent to this
25 A. True.	25 litigation?
Page 11	Page 13
1 Q. Just so the jury is not confused. It was	1 A. It might be. But again, when I do produce
2 not at the request of the Court; true?	2 e-mail correspondences, it's because specifically
3 A. True.	3 stated in the Duces Tecum. I didn't see it there.
4 Q. It was not at the request of me, defense	4 Q. Okay. But you may or may not consider it
5 counsel; true?	5 part of your entire file, but you did not produce
6 A. True.	6 it here today; true?
7 Q. It was at the request of the attorneys	7 A. I didn't bring either correspondences.
8 representing her in her personal injury litigation;	8 Correct.
9 true?	9 Q. Do you have e-mails -- well, let me ask it
10 A. Yes.	10 two different ways. Do you have e-mail
11 Q. All right. Was Ms. Hills cooperative in	11 correspondences from The Carlson Law Firm?
12 your examination?	12 A. Yes, sir.
13 A. Yes, sir.	13 Q. Do you have written correspondences received
14 Q. And as a result of the examination, you did	14 by regular mail or by fax from The Carlson Law
15 in fact prepare a life care plan; is that true?	15 Firm?
16 A. Correct.	16 A. Not that I recall regarding this case.
17 Q. And I believe you have produced that, along	17 Q. Okay. There had been other occasions where
18 with -- what I understand to be your complete file	18 The Carlson Law Firm has retained you to prepare a
19 on a CD form, which I've briefly been able to	19 life care plan on behalf of one of their clients;
20 produce through the courtesy of Ms. Peschel, who	20 true?
21 has a CD player.	21 A. True.
22 MR. PAYNE: And this CD that I'll	22 Q. Okay. On how many occasions has The Carlson
23 now mark as Exhibit Number 1.	23 Firm retained you for that purpose?
24 BY MR. PAYNE:	24 A. I'm going to guess about 20 or less.
25 Q. Is that your response to my request for your	25 Q. I'm sorry?

ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020

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Page 14	Page 16
<p>1 A. Twenty or less.</p> <p>2 Q. Okay. All right. While I am on this, let</p> <p>3 me just go through it. The second item I requested</p> <p>4 for you to bring here today is all written or other</p> <p>5 documentation concerning reflecting factual</p> <p>6 observations test supporting data, calculations,</p> <p>7 and opinions of you including your reports.</p> <p>8 Have you provided that information to</p> <p>9 me?</p> <p>10 A. Yes. That's in the CD.</p> <p>11 Q. Okay. And that consists of the life care</p> <p>12 plan; true?</p> <p>13 A. True.</p> <p>14 Q. All right. There are no other tests,</p> <p>15 supporting data, calculations, or opinions that you</p> <p>16 have made, or obtained, or created in this case</p> <p>17 that are not present on that CD; is that accurate?</p> <p>18 A. Accurate.</p> <p>19 Q. Number three on the Duces Tecum I request</p> <p>20 all writings or other documentation used in forming</p> <p>21 the basis of your opinions. Are there any such</p> <p>22 writings?</p> <p>23 A. Like literature review? No, sir.</p> <p>24 Q. Okay. So in this instance, you did not rely</p> <p>25 on any documentation or writings as a basis for</p>	<p>1 anything like that?</p> <p>2 A. I don't anticipate any. No.</p> <p>3 Q. All right. I did see in my brief look at</p> <p>4 what was on the CD that you were provided with some</p> <p>5 medical records; is that true?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And did you review those medical records in</p> <p>8 preparation of your life care plan?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And I think your life care plan does contain</p> <p>11 a record Summary, does it not? On page five?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then the Summary continues on to the top</p> <p>14 of page seven; true?</p> <p>15 A. True.</p> <p>16 Q. All right. And so, your report itself</p> <p>17 consists of the initial phase -- well, there is a</p> <p>18 cover page, page two is an introduction, and then</p> <p>19 the bottom part of page -- pardon me -- of page</p> <p>20 three references the IME.</p> <p>21 And I do not see on the IME, page three</p> <p>22 of 12, any particular notations about the results</p> <p>23 of your physical examination. Are they located</p> <p>24 anywhere else in your report?</p> <p>25 A. Yes. The physical examination starts in</p>
Page 15	Page 17
<p>1 forming your opinions other than anything contained</p> <p>2 on that CD; true?</p> <p>3 A. True.</p> <p>4 Q. Did you bring your CV here today?</p> <p>5 A. It's in the CD.</p> <p>6 Q. All right. Did you bring a list of your</p> <p>7 writings, speeches, and publications?</p> <p>8 A. No, sir. There's a mention of one of the</p> <p>9 publications that I was involved in in the CD, or</p> <p>10 it should be.</p> <p>11 Q. All right. And then number six is similar,</p> <p>12 I guess, to number two or three. All documents,</p> <p>13 reports, letters, studies, and statistical data of</p> <p>14 compilations that will be to substantial your</p> <p>15 opinions. Are there any documents, reports,</p> <p>16 letters, data that support your opinions that are</p> <p>17 not on that CD and in your life care plan?</p> <p>18 A. No, sir.</p> <p>19 Q. Item number seven is calculations, formulas,</p> <p>20 and equations to support your opinion. Is there</p> <p>21 anything that you utilized that's not on that CD?</p> <p>22 A. No, sir.</p> <p>23 Q. Finally, number eight is a display of</p> <p>24 exhibits that you intend to use at the trial of</p> <p>25 this case. Do you intend to use any visuals or</p>	<p>1 page six of 12 until seven of 12.</p> <p>2 Q. Okay. All right. And on page four of your</p> <p>3 report, there's a section entitled Questionnaire.</p> <p>4 And I assume this is, in part, or maybe in its</p> <p>5 entirety the history that Ms. Hills provided to</p> <p>6 you; is that true?</p> <p>7 A. The request was part of it. Also, the</p> <p>8 Summary section page five of 12 includes part of</p> <p>9 the interview that I had with her.</p> <p>10 Q. And you -- she reported to you that she had</p> <p>11 been involved in a motor vehicle accident in 1999?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And she had been involved in another</p> <p>14 accident in either 2000 or 2001?</p> <p>15 A. Yes.</p> <p>16 Q. For which she received or was taken to the</p> <p>17 hospital?</p> <p>18 A. Yes.</p> <p>19 Q. And for which she had reported to you lower</p> <p>20 back pain, right hip pain for which she received</p> <p>21 chiropractic care; is that true?</p> <p>22 A. Yes.</p> <p>23 Q. And then in 2002, she reported to you that</p> <p>24 she had -- was assaulted and punched in the nose,</p> <p>25 and went to the emergency room?</p>

ROSE HILLS vs SAM'S EAST, INC., ET AL.
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<p style="text-align: right;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. But that she did not have aggravating</p> <p>3 headaches, neck pain, or back pain as a result?</p> <p>4 A. Correct.</p> <p>5 Q. She also reported to you that she did have a</p> <p>6 prior history of migraine headaches; is that true?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When did she tell you those first started?</p> <p>9 And I'll refer you to the top of page six, I think.</p> <p>10 A. She said since her mid 20s.</p> <p>11 Q. And how old of a lady is she now?</p> <p>12 A. She was 37 when I saw her.</p> <p>13 Q. So she had been having headaches for at</p> <p>14 least a decade before the event at the Sam's Club,</p> <p>15 according to her own history; is that true?</p> <p>16 A. Yes.</p> <p>17 Q. Now, your record notes that the headaches</p> <p>18 preceding the event at Sam's were not nearly as</p> <p>19 frequent or severe as they were following the event</p> <p>20 at Sam's. Do you see where that is written in that</p> <p>21 same area? At the top of page six?</p> <p>22 A. Hold on. True. True. Yeah. Yeah. I see</p> <p>23 it.</p> <p>24 Q. So -- but the inclusion of that statement</p> <p>25 that the headaches before this event as opposed to</p>	<p style="text-align: right;">Page 20</p> <p>1 have her prior records?</p> <p>2 A. I had her records. Yeah.</p> <p>3 Q. Did you have records predating the October</p> <p>4 event? October 2016?</p> <p>5 A. No.</p> <p>6 Q. So you didn't have her prior records?</p> <p>7 A. I had her -- I mean, prior obviously to my</p> <p>8 evaluation, but not prior to the accident.</p> <p>9 Q. And perhaps I should be more precise. You</p> <p>10 were not provided and as we sit here today, you</p> <p>11 have not reviewed Ms. Hills' medical records that</p> <p>12 predate the event the Sam's; true?</p> <p>13 A. True.</p> <p>14 Q. And so kind of back to my other question.</p> <p>15 As to the severity and frequency of her prior</p> <p>16 migraine headaches, you have no independent way of</p> <p>17 knowing that; true?</p> <p>18 A. Other than what she said. Correct.</p> <p>19 Q. Other than what the plaintiff in this</p> <p>20 lawsuit has told you, you have no way of knowing</p> <p>21 her history of migraines that predate the event at</p> <p>22 Sam's; true?</p> <p>23 A. To the extent that I didn't review records</p> <p>24 showing that. Correct. And then prior to the</p> <p>25 fall.</p>
<p style="text-align: right;">Page 19</p> <p>1 after this event, that is written in there as part</p> <p>2 of her history, that is what she told you; true?</p> <p>3 A. True.</p> <p>4 Q. That statement is not written in there based</p> <p>5 on your independent review of her medical records;</p> <p>6 true?</p> <p>7 A. True.</p> <p>8 Q. As to any kind of -- well, you are not</p> <p>9 offering a medical opinion that her headaches were</p> <p>10 more severe following this event as opposed to</p> <p>11 prior to this event on anything other than what she</p> <p>12 told you; true?</p> <p>13 A. And the medical records.</p> <p>14 Q. Well, but did you do an independent review</p> <p>15 of her medical records?</p> <p>16 A. I reviewed her records. Yeah.</p> <p>17 Q. And you saw where there were numerous</p> <p>18 reports of a history of migraine headaches</p> <p>19 preceding the event at Sam's; true?</p> <p>20 A. She did have a -- she reported headaches.</p> <p>21 But the ones that I'm referring to were the ones</p> <p>22 described as posttraumatic headaches from her</p> <p>23 neurologist.</p> <p>24 Q. Well, let me ask it this way: Did your</p> <p>25 independent review of Ms. Hills -- well, did you</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. And so, back to my question then.</p> <p>2 Other than what she told you, you have no basis for</p> <p>3 any -- well, are you offering an opinion that her</p> <p>4 headaches were worse after the event at Sam's?</p> <p>5 A. Yes.</p> <p>6 Q. And that's based on what she told you?</p> <p>7 A. And the medical records showing that she has</p> <p>8 a new kind of headache, a posttraumatic headache.</p> <p>9 Q. Well -- but you don't know what was going on</p> <p>10 before; right?</p> <p>11 A. Headaches. I mean --</p> <p>12 MS. PESCHEL: Objection to form.</p> <p>13 BY MR. PAYNE:</p> <p>14 Q. But migraine headaches?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. I mean, I didn't -- I'm not sure if I</p> <p>17 brought her prior records. But I'll represent to</p> <p>18 you, her prior records do reference migraine</p> <p>19 headaches within the few years leading up the event</p> <p>20 at Sam's.</p> <p>21 Do you have any reason to disagree with</p> <p>22 that?</p> <p>23 MS. PESCHEL: I'm going to object</p> <p>24 to the form of the question, because I</p> <p>25 have the records here, and I don't want</p>

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<p>1 the witness to be misled because when I</p> <p>2 looked at them, I didn't see anything</p> <p>3 where she's complaining of migraines in</p> <p>4 any of those prior records.</p> <p>5 MR. PAYNE: Okay. Well --</p> <p>6 MS. PESCHEL: Only on the History</p> <p>7 section, like, in her current records,</p> <p>8 if that makes sense. Like, there's a</p> <p>9 medical history of the patient.</p> <p>10 MR. PAYNE: That says history of</p> <p>11 migraine headaches.</p> <p>12 MS. PESCHEL: But there's no</p> <p>13 treatment.</p> <p>14 MR. PAYNE: Okay. Well, there is</p> <p>15 treatment in her prior records; right?</p> <p>16 You agree with that?</p> <p>17 MS. PESCHEL: For migraines? For</p> <p>18 migraines?</p> <p>19 MR. PAYNE: Yes.</p> <p>20 MS. PESCHEL: I did not see any</p> <p>21 treatment for migraines.</p> <p>22 MR. PAYNE: Okay. You didn't see</p> <p>23 at least three references to migraine</p> <p>24 headaches predating this accident?</p> <p>25 MS. PESCHEL: I saw her go in with</p>	<p>1 A. True.</p> <p>2 Q. And you're not -- you have not reviewed any</p> <p>3 objective testing that shows any way -- well, have</p> <p>4 you observed any objective testing that supports</p> <p>5 her complaints of migraine headaches?</p> <p>6 A. Short answer is no. I mean, migraine</p> <p>7 headaches for the most part -- there's, you know,</p> <p>8 it's a subjective complaint. You know, a brain MRI</p> <p>9 will not tell you somebody -- it depends; right?</p> <p>10 Some MRI showings can show you -- point a</p> <p>11 differential diagnosis of a headache; right? But,</p> <p>12 you know, it's not 100 percent specific for that.</p> <p>13 Q. Let's talk a little bit about that. You</p> <p>14 characterized a migraine as a subjective complaint.</p> <p>15 Can you explain to the ladies and gentlemen of the</p> <p>16 jury what you mean by subjective?</p> <p>17 A. Subjective means something that the patient</p> <p>18 is telling you.</p> <p>19 Q. And versus -- what does objective mean?</p> <p>20 A. Objective is something that you can measure.</p> <p>21 Q. And --</p> <p>22 A. Or, you know, independently verify</p> <p>23 basically.</p> <p>24 Q. Okay. Yeah. So in this instance, and in</p> <p>25 most instances unless you see some lesion, or, you</p>
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<p>1 complaints of headaches and have</p> <p>2 sinusitis I had her go in, and complain</p> <p>3 of headaches, and diarrhea, and they</p> <p>4 said it was a viral infection.</p> <p>5 Can we go off the record and</p> <p>6 give the prior records to the doctor?</p> <p>7 MR. PAYNE: Well, no. We are here</p> <p>8 to discuss what his opinions are today;</p> <p>9 okay?</p> <p>10 BY MR. PAYNE:</p> <p>11 Q. You have not reviewed her prior records;</p> <p>12 right?</p> <p>13 A. Prior to the fall. Correct.</p> <p>14 Q. Yeah. You don't know what she reported to</p> <p>15 her doctors about migraines or not migraines based</p> <p>16 on anything other than what she told you; right?</p> <p>17 A. True.</p> <p>18 Q. She told you they were more severe after the</p> <p>19 event at Sam's, but you have no way of</p> <p>20 independently verifying that based on what you've</p> <p>21 received up to today; true?</p> <p>22 A. True.</p> <p>23 Q. But even she told you that she had at least</p> <p>24 a decade-long history of headaches before any event</p> <p>25 at Sam's; true?</p>	<p>1 know, something pretty traumatic, or important, or</p> <p>2 significant, you're not typically going to find an</p> <p>3 objective independent verification of a migraine</p> <p>4 headache; correct?</p> <p>5 A. For the most part. Correct.</p> <p>6 Q. All right. And so, you have to rely on the</p> <p>7 patient to tell you that they're having a migraine</p> <p>8 headache; right?</p> <p>9 A. Right.</p> <p>10 Q. And so, any diagnosis of a migraine</p> <p>11 headache, in this instance, is based only on what</p> <p>12 Ms. Hills has told you and told her other medical</p> <p>13 providers; true?</p> <p>14 A. True.</p> <p>15 Q. All right. So we have to rely on Ms. Hills'</p> <p>16 subjective complaints to support a diagnosis a</p> <p>17 migraine headaches; true?</p> <p>18 A. True.</p> <p>19 Q. And if she is mistaken or otherwise wrong,</p> <p>20 then that diagnosis cannot be supported; true?</p> <p>21 MS. PESCHEL: Form.</p> <p>22 THE WITNESS: If she is mistaken as</p> <p>23 to what?</p> <p>24 BY MR. PAYNE:</p> <p>25 Q. As to whether she is actually having a</p>

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<p style="text-align: right;">Page 26</p> <p>1 migraine headache.</p> <p>2 A. I mean, in the event that she's not being</p> <p>3 truthful about her symptoms, you know, that would</p> <p>4 be a problem.</p> <p>5 Q. Right. It would be a problem -- you cannot</p> <p>6 offer an accurate diagnosis if someone is not</p> <p>7 accurate about their symptoms?</p> <p>8 A. True.</p> <p>9 Q. And if someone says that their symptoms are</p> <p>10 worse after a particular event, you have no way of</p> <p>11 independently varying that; true?</p> <p>12 A. In this case, it would be tough. I mean, I</p> <p>13 would rely on her verbalization of her symptoms.</p> <p>14 Right.</p> <p>15 Q. Well, and did you review her emergency room</p> <p>16 records?</p> <p>17 A. From the date of the accident? I have</p> <p>18 Baylor, Scott & White notes.</p> <p>19 Q. Okay.</p> <p>20 A. Here.</p> <p>21 Q. And did you have an opportunity to review</p> <p>22 those?</p> <p>23 A. Yes. I reviewed those records.</p> <p>24 Q. Okay. And according to the history of</p> <p>25 present illness, what was her primary complaint on</p>	<p style="text-align: right;">Page 28</p> <p>1 Room?</p> <p>2 A. Okay. I'm looking at the document Bate</p> <p>3 Stamped at the bottom, PLTF00029. Okay. It says</p> <p>4 here, chief complaints patient presents with</p> <p>5 shoulder pain.</p> <p>6 Q. Okay. And do you see on there where she</p> <p>7 denied hitting her head?</p> <p>8 A. Yes.</p> <p>9 Q. Do you see where she denied losing</p> <p>10 consciousness?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see where she denied hitting her</p> <p>13 shoulder or neck directly?</p> <p>14 A. Yes.</p> <p>15 Q. Then it is noted that she had small</p> <p>16 abrasions on her foot and ankle. Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. And so, do you see anything in the emergency</p> <p>19 room record referencing a blow to the head or any</p> <p>20 reference to headaches?</p> <p>21 A. It says here, a few hours later she reports</p> <p>22 bilateral neck stiffness and muscle soreness. And</p> <p>23 there's a history here (witness indicating) of</p> <p>24 migraine headaches.</p> <p>25 Q. A history of migraine headaches; right?</p>
<p style="text-align: right;">Page 27</p> <p>1 the date of this event at the Sam's Club? Was it</p> <p>2 shoulder pain?</p> <p>3 A. I got to find that document.</p> <p>4 Q. All right.</p> <p>5 A. Hold on. If you have it there, and you want</p> <p>6 to provide it, it'll make it faster.</p> <p>7 Q. You know, and again, unfortunately I only</p> <p>8 brought my summary.</p> <p>9 A. Okay.</p> <p>10 Q. I did not bring -- well, I may actually have</p> <p>11 brought the ER record. Let me see.</p> <p>12 A. Okay.</p> <p>13 Q. No, I don't. It's October 13, 2016 from</p> <p>14 Baylor Scott & White.</p> <p>15 A. The date of the accident you're talking</p> <p>16 about; right?</p> <p>17 Q. Yes. And the date of that record. And I</p> <p>18 think buy Baylor Scott & White goes backward if</p> <p>19 that's -- you know what I mean?</p> <p>20 A. Let me try to find it. Hold on. I need to</p> <p>21 be sure. October 13, 2016; correct?</p> <p>22 Q. Yes, sir.</p> <p>23 A. Yeah. And your question was?</p> <p>24 Q. What was her primary complaint when she</p> <p>25 appeared at the Baylor Scott & White Emergency</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yeah.</p> <p>2 Q. But no report of a -- no current complaint</p> <p>3 of headaches; true?</p> <p>4 A. Let me double-check here. Almost done</p> <p>5 here.</p> <p>6 Q. Sure.</p> <p>7 A. Yes. You're correct about that.</p> <p>8 Q. And just so we are clear: You've now had</p> <p>9 the opportunity to review the emergency room</p> <p>10 record. The primary complaint is shoulder pain;</p> <p>11 true?</p> <p>12 A. True.</p> <p>13 Q. She denies hitting her head or losing</p> <p>14 consciousness; correct?</p> <p>15 A. Correct.</p> <p>16 Q. She denies hitting her shoulder or neck</p> <p>17 directly; correct?</p> <p>18 A. True.</p> <p>19 Q. And there -- she does tell the folks at the</p> <p>20 emergency room about her history of migraine</p> <p>21 headaches; true?</p> <p>22 A. True.</p> <p>23 Q. But she is not reporting any new headaches</p> <p>24 on the date of the accident; correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. And then, if you can turn to October 17,</p> <p>2 which I think is her next visit to Baylor Scott &</p> <p>3 White.</p> <p>4 A. I'm here (witness indicating).</p> <p>5 Q. And do you see where she specifically denies</p> <p>6 headaches in that record?</p> <p>7 A. Hold on. I see it.</p> <p>8 Q. All right. And it also reports that her</p> <p>9 neck has no midline or bony tenderness with a good</p> <p>10 range of motion. Do you see that?</p> <p>11 A. In the Physical exam section?</p> <p>12 Q. I'm not sure where. I think so.</p> <p>13 A. Let me see. I see in review of symptoms,</p> <p>14 positive for arthrology as in neck pain, but you're</p> <p>15 saying limitation of range of motion?</p> <p>16 Q. Again, and I apologize for not bringing that</p> <p>17 record today. I'm just -- my Summary reflects good</p> <p>18 ROM next to neck or denial of neck tenderness.</p> <p>19 A. I see it.</p> <p>20 Q. Okay. And they --</p> <p>21 A. However -- I'm sorry to interrupt. It says</p> <p>22 she exhibits spasms in her neck.</p> <p>23 Q. Okay. And they did an x-ray on her left</p> <p>24 wrist; correct?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 32</p> <p>1 anything like that; true?</p> <p>2 A. True.</p> <p>3 Q. And no loss of consciousness; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And no films made of the head? Any type of</p> <p>6 x-ray, or MRI, or CT scan; true?</p> <p>7 A. True.</p> <p>8 Q. All right. You reference in the History and</p> <p>9 Summary posttraumatic headaches. Why -- what is</p> <p>10 the basis of your characterization of her headaches</p> <p>11 as being posttraumatic?</p> <p>12 A. Partly it's her treating neurologist</p> <p>13 categorized it as that. But independently, it is a</p> <p>14 posttraumatic headache because may not immediately</p> <p>15 after the fall, but progressively thereafter she</p> <p>16 did develop headaches after that fall.</p> <p>17 Q. Well, let me ask you this: We -- based on</p> <p>18 our own medical records that you have looked at,</p> <p>19 she's got a history of migraines; right?</p> <p>20 A. Yes.</p> <p>21 Q. She has no blow to the head on the date of</p> <p>22 the accident; right?</p> <p>23 A. Right.</p> <p>24 Q. No subjective complaints of headaches on the</p> <p>25 date of the accident; right?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And that appears to be her primary complaint</p> <p>2 that day; true?</p> <p>3 A. And --</p> <p>4 MS. PESCHEL: Objection.</p> <p>5 THE WITNESS: And neck pain. Yeah.</p> <p>6 BY MR. PAYNE:</p> <p>7 Q. But they don't x-ray, they don't MRI, they</p> <p>8 don't do anything in terms of tests or films of her</p> <p>9 neck on that day; true?</p> <p>10 A. Correct.</p> <p>11 Q. And they certainly don't do anything with</p> <p>12 respect to her head in terms of testing; true?</p> <p>13 A. Correct.</p> <p>14 Q. Now, those records on the date of the</p> <p>15 accident and a few days following the accident, are</p> <p>16 those consistent or inconsistent with an</p> <p>17 aggravation of her migraine complaints?</p> <p>18 A. The question is did the records that we just</p> <p>19 talked about, are they consistent with --</p> <p>20 Q. Or inconsistent with a -- some type of</p> <p>21 aggravation of her issue with migraines?</p> <p>22 A. So she didn't develop any worsening</p> <p>23 headaches or migraine headaches after --</p> <p>24 immediately after the fall.</p> <p>25 Q. And there was no blow to the head or</p>	<p style="text-align: right;">Page 33</p> <p>1 A. True. Well, she did have neck pain in that</p> <p>2 one.</p> <p>3 Q. Okay.</p> <p>4 A. Sometimes that can take time before it</p> <p>5 starts.</p> <p>6 Q. Well, I understand. But no migraine</p> <p>7 headaches are reported either on the accident, or</p> <p>8 three or four days later; right?</p> <p>9 A. Not immediately after the accident.</p> <p>10 Correct.</p> <p>11 Q. All right. And so, I understand you're</p> <p>12 saying that a neurologist characterized them as</p> <p>13 posttraumatic headaches, but I'm asking you. Do</p> <p>14 you have an independent basis of -- an opinion, if</p> <p>15 you're offering that opinion, that her headaches</p> <p>16 are posttraumatic as opposed to these ongoing</p> <p>17 issues she has with migraines?</p> <p>18 A. Posttraumatic. That's my opinion.</p> <p>19 Q. Based on what? What are you basing that on?</p> <p>20 A. Well, the fall. Again, it doesn't have to</p> <p>21 happen immediately after the injury. However, the</p> <p>22 course of -- and again, as we established, I don't</p> <p>23 have her prior records before the fall.</p> <p>24 But according to her history and the</p> <p>25 nature of her condition dramatically changed after</p>

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<p style="text-align: right;">Page 34</p> <p>1 that fall. So that's why I'm attributing the</p> <p>2 diagnosis of posttraumatic headache to the fall.</p> <p>3 Q. Okay. Based on what she said happened?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay.</p> <p>6 A. And again, the medical records and the</p> <p>7 change of her pathology afterwards.</p> <p>8 Q. But again, headaches are what she says;</p> <p>9 right?</p> <p>10 A. She has headaches. Yeah.</p> <p>11 Q. Okay. Ms. Hills; reported to you, she</p> <p>12 reported to her neurologist, she did not report to</p> <p>13 the ER physicians, but reported to those folks that</p> <p>14 her headaches became worse after this fall; true?</p> <p>15 A. Hmm-hmm. Yeah.</p> <p>16 Q. And nothing else supports her headaches</p> <p>17 becoming worse after this fall other than her</p> <p>18 saying that to her healthcare providers; true?</p> <p>19 A. True.</p> <p>20 MS. PESCHEL: Objection to form.</p> <p>21 THE WITNESS: Right.</p> <p>22 BY MR. PAYNE:</p> <p>23 Q. And so, the sole basis that you're relying</p> <p>24 on from your review of the records, the neurologist</p> <p>25 is relying on is what Ms. Hills said happened as</p>	<p style="text-align: right;">Page 36</p> <p>1 C5-6, C7-T1, and T1, and T2.</p> <p>2 Q. And have you reviewed those actual films?</p> <p>3 A. No. I saw the reports.</p> <p>4 Q. You rely on the radiology report?</p> <p>5 A. I do.</p> <p>6 Q. Okay.</p> <p>7 A. In this case, I do.</p> <p>8 Q. All right. As far as whether those</p> <p>9 herniations resulted from the event in question or</p> <p>10 were preexisting degenerative conditions, do you</p> <p>11 have any way of knowing?</p> <p>12 A. Yeah. My opinion is that they were caused</p> <p>13 by the fall.</p> <p>14 Q. What is the basis of that opinion?</p> <p>15 A. The fact that, you know, multiple disc</p> <p>16 herniations after a traumatic event with reports of</p> <p>17 neck pain, and having physical exam findings of,</p> <p>18 you know, neck tenderness and spasms. And within a</p> <p>19 reasonable degree of medical probability, that's my</p> <p>20 opinion.</p> <p>21 Q. But again, it relies on her saying that she</p> <p>22 had neck pain following this event; true?</p> <p>23 A. Yes. I mean, these herniations are</p> <p>24 symptomatic in her case. Correct.</p> <p>25 Q. Well, in -- I mean, are thoracic herniations</p>
<p style="text-align: right;">Page 35</p> <p>1 far as her headaches becoming worse; true?</p> <p>2 A. Yeah. Again, my opinion is based on her</p> <p>3 saying that her -- and what she told her treaters</p> <p>4 that her headaches worsened. Yeah.</p> <p>5 Q. And if she is mistaken, or wrong, or is not</p> <p>6 being candid, then that diagnosis is misplaced;</p> <p>7 true?</p> <p>8 A. It's possible. Yeah.</p> <p>9 Q. All right. So moving on under your analysis</p> <p>10 of findings. And we have kind of talked about this</p> <p>11 as well. You offer a diagnosis -- three diagnoses:</p> <p>12 Posttraumatic headaches, posttraumatic cervical</p> <p>13 radiculopathy, and posttraumatic disc herniations</p> <p>14 at three levels. Do you see that?</p> <p>15 A. Yeah.</p> <p>16 Q. We've already talked about the posttraumatic</p> <p>17 headaches that your opinion relies solely on what</p> <p>18 Ms. Rose -- pardon me -- Ms. Hills said; true?</p> <p>19 A. True.</p> <p>20 Q. What about -- what is the basis of your</p> <p>21 diagnosis that Ms. Hills has cervical</p> <p>22 radiculopathy?</p> <p>23 A. On her history, her neck pain was shooting</p> <p>24 down the arms, and there's a cervical MRI showing</p> <p>25 the herniations at C5-6, C6-7, T1. I'm sorry.</p>	<p style="text-align: right;">Page 37</p> <p>1 typically related to any type of trauma?</p> <p>2 A. They can be. Yeah.</p> <p>3 Q. But as to here -- as I understand it, you</p> <p>4 are relying on the radiology report, which notes</p> <p>5 herniations. Your opinion that they resulted --</p> <p>6 that those herniations that are reflected or</p> <p>7 reported relate to this particular event, as</p> <p>8 opposed to two car wrecks, being punched in the</p> <p>9 face, ordinary disease of life, and degeneration.</p> <p>10 The reason you distinguish it and say it was from</p> <p>11 this accident is based only on what she told you;</p> <p>12 true?</p> <p>13 A. No. And the medical records as well.</p> <p>14 Right. She did report neck pain, stiffness. She</p> <p>15 had, you know, a physical exam that showed she had</p> <p>16 neck pain and spasms. So those things have --</p> <p>17 Q. So what she told you and what she told her</p> <p>18 medical providers; true?</p> <p>19 A. True.</p> <p>20 Q. Is that --</p> <p>21 A. And part of the physical exam that is an</p> <p>22 objective finding is palpating for spasms. Right.</p> <p>23 So --</p> <p>24 Q. But as to what those spasms resulted from,</p> <p>25 any relationship to this event versus these other</p>

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<p>1 events that she reported to you, it relies solely</p> <p>2 on her saying that it came from this fall; true?</p> <p>3 MS. PESCHEL: Objection to form.</p> <p>4 THE WITNESS: To the extent that</p> <p>5 the emergency room, you know, from the</p> <p>6 fall reported those symptoms. Yes.</p> <p>7 BY MR. PAYNE:</p> <p>8 Q. Well, you just read the ER record. Didn't</p> <p>9 she in fact even after the event occurred, she went</p> <p>10 home, and took a nap, and then decided go back to</p> <p>11 the emergency room. Did you say that in there?</p> <p>12 A. What date are we talking about?</p> <p>13 Q. The initial emergency room visit. She did</p> <p>14 not feel bad -- I'll just read from it from</p> <p>15 nurses's notes. She did not feel bad at first, but</p> <p>16 realized at home that she feels hurt.</p> <p>17 Do you see that in there?</p> <p>18 A. I got to find it.</p> <p>19 Q. Okay. I'll tell you what, let's keep</p> <p>20 moving, if you don't mind.</p> <p>21 A. All right.</p> <p>22 Q. Certainly the event at the Sam's Club did</p> <p>23 not necessitate -- based on history and your review</p> <p>24 of the record any paramedics come to the scene;</p> <p>25 true?</p>	<p>1 Q. You did not make an independent review of</p> <p>2 the films to offer that opinion; true?</p> <p>3 A. Correct.</p> <p>4 Q. Now, you go on to say that her impairments</p> <p>5 are permanent. What is the basis of that opinion?</p> <p>6 A. The fact that she persists with the symptoms</p> <p>7 of, you know, neck pain, cervical radiculopathy,</p> <p>8 posttraumatic headaches that are chronic in nature,</p> <p>9 despite treatment. You know, that's why my opinion</p> <p>10 is that she has a permanent impairment.</p> <p>11 Q. But as far as whether she already had a</p> <p>12 permanent impairment from her history of migraine</p> <p>13 headaches -- we've already discussed this, you have</p> <p>14 no way of making that distinction; true?</p> <p>15 A. I'm sorry. Can you repeat that?</p> <p>16 Q. You cannot say, based on a reasonable degree</p> <p>17 of medical certainty, that she was not already</p> <p>18 permanently impaired given her history of migraine</p> <p>19 headaches; true?</p> <p>20 A. I can. No, I can.</p> <p>21 Q. Based only on what she told you?</p> <p>22 A. Yes. And again, the medical records --</p> <p>23 you're right, I didn't review the medial record</p> <p>24 prior, but based on the records I reviewed and her</p> <p>25 history. Yes.</p>
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<p>1 A. I don't recall that.</p> <p>2 Q. She wasn't transported by ambulance;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. She reported -- I'll represent to you that</p> <p>6 she reported that she actually left on her own,</p> <p>7 went home, took a nap, and then realized she</p> <p>8 decided she wanted to go to the emergency room.</p> <p>9 That's reflected in that ER record. Do you have</p> <p>10 any reason to disagree with that?</p> <p>11 A. If you represent it, I'll believe you.</p> <p>12 Q. All right. And as far as any prior neck</p> <p>13 complaints, you have not reviewed any record</p> <p>14 predating the October event at Sam's; true?</p> <p>15 A. True.</p> <p>16 Q. Nor have you reviewed any films, if they</p> <p>17 exist, of any -- for her that predate the event at</p> <p>18 Sam's; true?</p> <p>19 A. Correct.</p> <p>20 Q. All right. As far -- well, really part</p> <p>21 three of your diagnoses really relates to part two.</p> <p>22 You're saying she has disc herniations, but you're</p> <p>23 relying only on the radiology report that reports</p> <p>24 of herniations; true?</p> <p>25 A. Correct.</p>	<p>1 MS. PESCHEL: And if we are going</p> <p>2 to go down there, I have them sitting</p> <p>3 right here. I was just provided the</p> <p>4 previous records last night at about</p> <p>5 5:30. If we could go off the record, he</p> <p>6 can peruse them real quickly.</p> <p>7 MR. PAYNE: Okay. Well, let's</p> <p>8 continue on. And if you want to do that</p> <p>9 with your direct, that's fine.</p> <p>10 MS. PESCHEL: That's fine.</p> <p>11 BY MR. PAYNE:</p> <p>12 Q. All right. Let's shift gears and talk about</p> <p>13 kind of what I would characterize as part two of</p> <p>14 your opinions. And that is the life care plan.</p> <p>15 You have offered a life care plan in this case;</p> <p>16 correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And as it relates to the life care plan,</p> <p>19 what is your opinion that you're offering to the</p> <p>20 jury or opinions?</p> <p>21 A. You're talking about the specific -- the</p> <p>22 cost of future care?</p> <p>23 Q. Well, I mean whatever they are. Tell me</p> <p>24 what your opinions are in terms of what Ms. Hills</p> <p>25 needs in the future.</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Okay. So regarding the future needs of Ms. 2 Hills -- I'm looking at page -- I did two types of 3 care, one more conservative and one less 4 conservative. I'm looking at page 8 of 12. Let me 5 know when you're there. 6 Q. Okay. 7 A. So future care would be neurology visits at 8 least three times per year. Then the 9 Dihydroergotamine medications at least twice a 10 week, Emgality medication one per a week, Reglan 11 (ph) 10 milligram once a week, Naratriptan 40 12 milligrams every night, and a cervical MRI one time 13 every five years. 14 The other option for her would be the same 15 thing, but to treat her headaches also with 16 bilateral greater and lesser occipital nerve blocks 17 two times a year. 18 Q. Now you understand -- well, do you 19 understand whether Ms. Hills has glaucoma? 20 A. Yes, sir. 21 Q. Would you still recommend occipital nerve 22 blocks to someone who has glaucoma? 23 A. Yeah. When you do the -- part of the reason 24 -- she was told not to get cervical epidural 25 steroid injections. She went to the doctor because</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I don't recall exactly. 2 Q. Pretty recently. It's a pretty expensive 3 drug? 4 A. I list the price here, \$8,280 per year. 5 Q. Okay. Are there migraine medications 6 available that are priced less than what you list 7 as 8,000 per year? 8 A. It's possible. Yeah. 9 Q. And likewise, the Dihydroergotamine -- and 10 I'll give that to you -- which I think it goes -- 11 what's its trade name? Which is certainly easier 12 to say. 13 A. Trade name? I don't recall that one. 14 Q. It's something like migratol (ph) or 15 something? 16 A. No. 17 Q. That doesn't ring any bells? 18 A. No. 19 Q. Are you familiar with that medication? 20 A. The Ergotamine family. Yeah. 21 Q. I'm sorry. Which family? 22 A. Ergotamine family. Yeah. 23 Q. Okay. And why did you choose that 24 particular drug that costs \$5,000 a year? 25 A. She was taking it.</p>
<p style="text-align: right;">Page 43</p> <p>1 steroids can aggravate the glaucoma. But when you 2 do occipital nerve blocks, you can do them with 3 steroids. Personally, I use local anesthetics 4 only. I don't use steroids. So it shouldn't be a 5 concern. 6 Q. But again, as to whether this future care 7 resulted from or relates to the event at Sam's 8 Club, we talked about this several times now, is 9 based on what she told you and what she told her 10 other medical providers; true? 11 A. True. 12 Q. As far as -- help me understand -- are you 13 recommending that she take two different 14 high-dollar migraine medications all at once? 15 A. You're talking about the medications that I 16 recommend? 17 Q. Yeah. 18 A. That's the regimen. Yeah. The regimen that 19 I recommended here. Correct. 20 Q. And as I generally understand it, this -- 21 how do you say it? Emgality? 22 A. Yeah. 23 Q. Emgality. That's a drug that just received 24 FDA approval within the last couple of years; 25 right?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. Did you plug in those medications for 2 any reason other than she had taken those two drugs 3 in the past? 4 A. And they work. Yeah. 5 Q. Well, she said they worked; right? 6 A. Yeah. 7 Q. Okay. Is that the sole basis for you using 8 those drugs? 9 A. Yes, sir. 10 Q. Okay. There are other drugs -- migraine 11 drugs that you could have put into your life care 12 plan; true? 13 A. Yes. However, she did try others and she 14 failed, like, Tripheinze (ph), Lyrica. So the 15 regimen she is on right now, you know, she is not 16 headache-free, but it's -- to a certain extent, 17 it's working for her. 18 Q. And you are reporting that she will continue 19 to need that for her entire life span; right? 20 A. Yes. 21 Q. And you have not discounted it for present 22 value; true? 23 A. True. 24 Q. And you have not accounted for the fact that 25 new drugs often fall in price as they're replaced</p>

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<p style="text-align: right;">Page 46</p> <p>1 by other new drugs; correct?</p> <p>2 A. It's possible. Yeah.</p> <p>3 Q. So it's certainly possible that this</p> <p>4 Engality will not continue to cost, as you put it,</p> <p>5 \$8,200 a year, but will reduce in price over time;</p> <p>6 true?</p> <p>7 A. Well, it's possible. Yeah.</p> <p>8 Q. Well, based on -- I mean, you're a pain</p> <p>9 doctor in part. You're familiar with pain</p> <p>10 medications. Do prices go down over time as</p> <p>11 different drugs come in and out of style? For lack</p> <p>12 of a better phrase.</p> <p>13 A. Now, it's possible. But again, there are</p> <p>14 examples of -- I mean, you might have heard a</p> <p>15 medication for -- I think it was tuberculosis.</p> <p>16 Some company bought that particular drug, and then</p> <p>17 they raised the prices, and --</p> <p>18 Q. And he went to jail.</p> <p>19 A. No. That was somebody else. But, you know,</p> <p>20 so is it possible that new medications will come</p> <p>21 and compete with this one? Driving the price down</p> <p>22 is possible. Yeah.</p> <p>23 Q. Okay. And just so we are clear: Your</p> <p>24 opinion as to Ms. Hills' future need of</p> <p>25 pharmaceutical drugs, one number, does not consider</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. What is -- why do you -- how do you arrive</p> <p>2 at that opinion?</p> <p>3 A. So this is a conservative life care plan;</p> <p>4 right? I mean, you could make the argument that</p> <p>5 she was a candidate for the epidural steroid</p> <p>6 injection, which wasn't done because of her</p> <p>7 glaucoma. However, there are other kinds of</p> <p>8 injections and therapy. She may be a candidate for</p> <p>9 or such as cervical radial nerve branch blocks,</p> <p>10 cervical radiofrequency lesioning. I'm not a</p> <p>11 surgeon, but it's possible that she might need</p> <p>12 surgery in the future. Spinal cord stimulator</p> <p>13 trials, implants, and all of that stuff, I didn't</p> <p>14 include that in here (witness indicating). But at</p> <p>15 the very least, to monitor the condition of her</p> <p>16 cervical spine once every five years.</p> <p>17 Q. And you price the cervical spine that she'll</p> <p>18 need -- or pardon me. Cervical MRI that she'll</p> <p>19 need every five years at \$590.80; true?</p> <p>20 A. I'm sorry. What?</p> <p>21 Q. You priced the cervical MRI at an average</p> <p>22 annual cost of \$590.80. True?</p> <p>23 A. You changed the page on me. It's 5 -- yeah,</p> <p>24 you're right, \$590.80. Yeah.</p> <p>25 Q. Okay. And in fact, the cervical MRI that</p>
<p style="text-align: right;">Page 47</p> <p>1 present value of the future needs of those drugs;</p> <p>2 true?</p> <p>3 A. No. When you said present value, I did not</p> <p>4 adjust it -- I used today's dollars.</p> <p>5 Q. Okay. And that is in part what I'm asking.</p> <p>6 And let's be clear about all of those points. You</p> <p>7 did not adjust your figure for present value for</p> <p>8 the future need of these drugs; true?</p> <p>9 A. True.</p> <p>10 Q. And likewise, you did not consider that</p> <p>11 those drugs may change in price over time; true?</p> <p>12 A. I did not make that calculation. Correct.</p> <p>13 Q. And your inclusion of these drugs is based</p> <p>14 only on the fact that she has used them in the past</p> <p>15 with some success; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And her need for those drugs, it may change</p> <p>18 over time; correct?</p> <p>19 A. It's possible. She may need more.</p> <p>20 Q. She may need more or she may need less?</p> <p>21 A. It's possible.</p> <p>22 Q. All right. And as far as the -- well, the</p> <p>23 need of a cervical MRI, you're saying she needs one</p> <p>24 every five years?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 49</p> <p>1 Ms. Hills had in this instance was done --</p> <p>2 A. Could I interrupt you for a second?</p> <p>3 Q. Of course.</p> <p>4 A. The MRI cost is \$2,954. So what you're</p> <p>5 looking at is a different table that divides it by</p> <p>6 five years.</p> <p>7 Q. Well, how much are you suggesting or opining</p> <p>8 that the cervical MRI is going to cost? Each one</p> <p>9 of them?</p> <p>10 A. \$2,954. And that's page 8 of 12.</p> <p>11 Q. Oh. Okay. So you're actually saying that</p> <p>12 the cervical MRI will cost almost \$3,000? I guess</p> <p>13 I did misread your table. You're saying the MRI</p> <p>14 costs that much?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Has that been your practice and experience</p> <p>17 that they actually cost that much?</p> <p>18 A. I've seen higher than that.</p> <p>19 Q. Well, did you look at what she was actually</p> <p>20 billed in this case for a cervical MRI that she did</p> <p>21 have?</p> <p>22 A. I don't recall that.</p> <p>23 Q. It isn't -- you do have the billing records</p> <p>24 though; right?</p> <p>25 A. I think so.</p>

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<p>1 Q. All right. I will hand you what I will mark</p> <p>2 as Exhibit Number 2.</p> <p>3 A. Okay.</p> <p>4 (Exhibit No. 2 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. PAYNE:</p> <p>7 Q. Did Ms. Hills undergo a cervical MRI in this</p> <p>8 instance?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And when was that done?</p> <p>11 A. I have here November 25, 2016.</p> <p>12 Q. And what was she initially charged for that</p> <p>13 cervical MRI?</p> <p>14 A. \$352.</p> <p>15 Q. All right. And what did the provider</p> <p>16 ultimately accept in satisfaction for having that</p> <p>17 cervical MRI done?</p> <p>18 MS. PESCHEL: Do you have both</p> <p>19 sides of the bills?</p> <p>20 MR. PAYNE: I don't know what that</p> <p>21 means.</p> <p>22 MS. PESCHEL: Scott White bills</p> <p>23 facility charge and doctor charge. So</p> <p>24 if you only have one of them, that's not</p> <p>25 the full charge of the MRI.</p>	<p>1 MRIs done; true?</p> <p>2 A. True. Because I used the database that</p> <p>3 includes bill charges from Baylor Scott & White.</p> <p>4 Q. And likewise, did you see what she was</p> <p>5 billed for the Engality? And what she was actually</p> <p>6 billed for that medication?</p> <p>7 A. I don't recall that.</p> <p>8 Q. Okay.</p> <p>9 MR. PAYNE: Let me hand you what</p> <p>10 I'll mark as Exhibit 3.</p> <p>11 (Exhibit No. 3 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. PAYNE:</p> <p>14 Q. What do you have as the price per dose of</p> <p>15 the Engality? What number do you plug in?</p> <p>16 A. Per year? \$8,280.</p> <p>17 Q. Well, per dose.</p> <p>18 A. So what I did was I usually look at the cost</p> <p>19 of the total 120 milligrams, and then look at the</p> <p>20 cost for that for the whole year. So I guess you</p> <p>21 can divide that by 12.</p> <p>22 Q. And what's your number again?</p> <p>23 A. The -- can divide it if you want. So if you</p> <p>24 divide it by 12, it's \$690 a month.</p> <p>25 Q. Okay.</p>
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<p>1 MR. PAYNE: Okay.</p> <p>2 THE WITNESS: So to answer your</p> <p>3 question \$111.25.</p> <p>4 BY MR. PAYNE:</p> <p>5 Q. And so, your opinion as to future cervical</p> <p>6 MRIs did not account the actually -- and if I have</p> <p>7 a misrepresentation, either way your number doesn't</p> <p>8 account for what she was actually billed in this</p> <p>9 case; true?</p> <p>10 A. That number is the average of, you know, the</p> <p>11 region for that.</p> <p>12 Q. And we'll get to that. But your number does</p> <p>13 not consider what she was actually billed; true?</p> <p>14 A. It does consider it. Yeah.</p> <p>15 Q. No. What she was actually billed for this</p> <p>16 charge.</p> <p>17 A. Well, the database I use looks at all bill</p> <p>18 charges in that region.</p> <p>19 Q. We're going to get to this. But in this</p> <p>20 instance, this particular bill, do you know what</p> <p>21 she was billed in this case for her cervical MRI?</p> <p>22 A. Yeah. \$352. Yeah.</p> <p>23 Q. And do you -- and you did not consider your</p> <p>24 actual bill in offering an opinion as to what it</p> <p>25 will cost her in the future to have more cervical</p>	<p>1 A. For the Engality.</p> <p>2 Q. All right. And I'm going to hand you</p> <p>3 Exhibit 3, and show you, and represent to you these</p> <p>4 are billing charges from a Walmart Pharmacy. And</p> <p>5 you see it was actually a little bit lower than</p> <p>6 that. What she was actually billed for that?</p> <p>7 A. She was billed \$1,153.60. Correct.</p> <p>8 Q. No. Look at each dose. 120 milligrams,</p> <p>9 they're each about 575. That's like a triple dose</p> <p>10 or a double dose?</p> <p>11 A. Oh, okay. I see Engality 120 milligrams per</p> <p>12 millimeter injection \$577.45.</p> <p>13 Q. And again, your life care plan does not</p> <p>14 account for what she has actually been billed in</p> <p>15 the past, just this input that you use or the</p> <p>16 system that you use; true?</p> <p>17 A. True.</p> <p>18 Q. Okay.</p> <p>19 A. Can I get some water? If you don't mind.</p> <p>20 Q. Of course. Yeah. Let's take a little</p> <p>21 break.</p> <p>22 THE VIDEOGRAPHER: We are off the</p> <p>23 record at 4:14 p.m.</p> <p>24 (At this time, off the record.)</p> <p>25 (At this time, back on the record.)</p>

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<p style="text-align: right;">Page 54</p> <p>1 THE VIDEOGRAPHER: Standby. We are</p> <p>2 back on the record at 4:16 p.m.</p> <p>3 BY MR. PAYNE:</p> <p>4 Q. All right. Dr. Miranda, are you ready to</p> <p>5 continue?</p> <p>6 A. Yes, sir.</p> <p>7 Q. All right. Dr. Miranda, the -- let's talk</p> <p>8 about how you arrived -- you talked about an</p> <p>9 average. How do you arrive at the annual costs for</p> <p>10 each of the medications and the other treatment</p> <p>11 that you have recommended for Ms. Hills?</p> <p>12 A. I used it -- for the medications, I used</p> <p>13 GoodRX. For the neurology visits, I have the MRI.</p> <p>14 I used a database called Fairhealth.org, the same</p> <p>15 thing for the injections, occipital nerve blocks.</p> <p>16 Q. All right. So as far as GoodRX --</p> <p>17 interestingly, I just happened upon a website</p> <p>18 called GoodRX, and I'll mark this as Exhibit 4.</p> <p>19 And again, this is just what I looked up</p> <p>20 yesterday, just kind of looking at this thing. You</p> <p>21 can see down here at the bottom, it says www.getrx,</p> <p>22 and it actually lists a bunch of pricing for that</p> <p>23 Emgality. Do you see that?</p> <p>24 A. Yes, sir.</p> <p>25 (Exhibit No. 4 was marked for</p>	<p style="text-align: right;">Page 56</p> <p>1 A. No, not even. I mean, if you look at the</p> <p>2 estimated retail price per dose, I divided my</p> <p>3 number by 12. It was 690. I'm looking at the</p> <p>4 estimated retail price from Walmart 658, CVS 787,</p> <p>5 Walgreens 691, Kroger's 691, Target 680, Costco</p> <p>6 676. So it's there, you know, in the 600s.</p> <p>7 Q. Using the retail pricing; right?</p> <p>8 A. No.</p> <p>9 Q. You don't consider any discounts that are</p> <p>10 readily available; right?</p> <p>11 A. Correct.</p> <p>12 Q. So your life care plan does not consider</p> <p>13 either the discount reflected in Ms. Hills' own</p> <p>14 records, nor does it reflect generally available</p> <p>15 discounted pricing available on the Internet; true?</p> <p>16 A. True.</p> <p>17 Q. All right. And as far as the</p> <p>18 pharmaceuticals go, it's pretty simple what you</p> <p>19 have done. You have simply taken a retail price</p> <p>20 for Emgality, and have assumed that Ms. Hills will</p> <p>21 not change that medication -- well, first it</p> <p>22 assumes her life span; right?</p> <p>23 A. Yes.</p> <p>24 Q. And then it assumes she will continue to</p> <p>25 take that exact medication; right?</p>
<p style="text-align: right;">Page 55</p> <p>1 identification.)</p> <p>2 BY MR. PAYNE:</p> <p>3 Q. And then again, it processes it even lower</p> <p>4 than what she's been paying, does it not?</p> <p>5 A. I don't know why they used here, but the</p> <p>6 numbers here are -- well, you look at the retail</p> <p>7 price, not looking at the free discount; right?</p> <p>8 So, we don't use collateral sources when we do life</p> <p>9 care plans. So when I do use these numbers, I use</p> <p>10 the estimated retail price.</p> <p>11 Q. Well, I'll tell you -- I'll represent to</p> <p>12 you, all I did was type in cost of Emgality, and</p> <p>13 that page popped up, and that pricing popped up.</p> <p>14 Did you do something different?</p> <p>15 A. I put the area code for the patient. That</p> <p>16 would be the only different thing.</p> <p>17 Q. Okay. At least based on what I've</p> <p>18 represented to you that I did, that pricing is</p> <p>19 different than what's reflected in your report for</p> <p>20 what is Emgality pricing; true?</p> <p>21 A. True.</p> <p>22 Q. And as far as the --</p> <p>23 A. Mind you, it's not way off.</p> <p>24 Q. No. It's not way off. About 100 bucks a</p> <p>25 pop off; right?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Sure.</p> <p>2 Q. And then it assumed that the price of that</p> <p>3 medication will not change over the next, what is</p> <p>4 it, 30 or 40 years?</p> <p>5 A. Whatever her life care plan is. Yeah.</p> <p>6 Q. All right. Okay. Now, as far as the</p> <p>7 medical treatment, what did you rely on as a basis</p> <p>8 for your opinions?</p> <p>9 A. I'm sorry. I don't understand the question.</p> <p>10 You mean what database I use for --</p> <p>11 Q. Yes.</p> <p>12 A. So for the neurology visits, the cervical</p> <p>13 MRI, and the occipital nerve blocks, I used a</p> <p>14 database called Fairhealth.org.</p> <p>15 Q. But as far as the -- and I am not -- I mean,</p> <p>16 obviously you're a professional and have a lot more</p> <p>17 education than I do. You know, you treat patients.</p> <p>18 I'm not trying to belittle what you do.</p> <p>19 What I'm saying is -- would you</p> <p>20 agree with me that at least as far as offering an</p> <p>21 opinion about the pharmaceutical pricing that Ms.</p> <p>22 Hills can anticipate in the future, that doesn't</p> <p>23 really require any of your medical background or</p> <p>24 expertise, either as a life care planner or a</p> <p>25 physician; right?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. The question is do I require medical</p> <p>2 expertise in determining exactly what -- the</p> <p>3 changes in costs in the future or --</p> <p>4 Q. Well, you -- as I understood what you did</p> <p>5 here, you just got the retail price at GoodRX.com</p> <p>6 for Engality, and the one I can't say, and you have</p> <p>7 assumed all of those things that she'll take it for</p> <p>8 the rest of her life, and it won't change in price;</p> <p>9 right? Those opinions do not require your medical</p> <p>10 expertise and they also do not require your life</p> <p>11 care planner expertise; true?</p> <p>12 MS. PESCHEL: Objection. Form.</p> <p>13 THE WITNESS: I mean, as a life</p> <p>14 care planner, they train us to look up</p> <p>15 pricing; right? So, I mean, it does</p> <p>16 require that part of the background.</p> <p>17 As far as the medical</p> <p>18 component and recommendations,</p> <p>19 obviously, you know, my training and</p> <p>20 expertise in these matters.</p> <p>21 As far as, you know,</p> <p>22 determining if these numbers are going</p> <p>23 to change, I don't know that for 100</p> <p>24 percent sure.</p> <p>25 BY MR. PAYNE:</p>	<p style="text-align: right;">Page 60</p> <p>1 terms that I -- you know, I'm</p> <p>2 recommending a treatment for headaches</p> <p>3 and full-out care. And the life care</p> <p>4 planning part comes in when we look at</p> <p>5 the costing. I mean, that's something</p> <p>6 that they train us how to do.</p> <p>7 BY MR. PAYNE:</p> <p>8 Q. But now you're not recommending treatment to</p> <p>9 Ms. Hill, are you?</p> <p>10 A. Well, the treatment that I'm putting here.</p> <p>11 Yeah. She's not my patient, but the life care plan</p> <p>12 is future treatment.</p> <p>13 Q. But let's be clear: Are you making a</p> <p>14 recommendation to Ms. Hills as to what she needs to</p> <p>15 do in the future?</p> <p>16 A. That's what the life care plan is. Yeah.</p> <p>17 Q. It's a recommendation to her? Do you -- are</p> <p>18 you comfortable doing that even though you're not</p> <p>19 her treating physician?</p> <p>20 A. Again, she's not my patient. But the</p> <p>21 recommendations that I'm making, you know, they're</p> <p>22 medical recommendations.</p> <p>23 Q. Okay.</p> <p>24 A. Knowing she's not my patient.</p> <p>25 Q. All right. So we are clear on that: You</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Yeah. And you haven't offered that opinion;</p> <p>2 right?</p> <p>3 A. What opinion?</p> <p>4 Q. That they'll change, that the pricing will</p> <p>5 change?</p> <p>6 A. They might. They might. Yeah. They might</p> <p>7 change.</p> <p>8 Q. But your opinion assumes they're not going</p> <p>9 to change; right?</p> <p>10 A. Well, my opinion -- again, I used today's</p> <p>11 dollars. I don't have a database telling me what</p> <p>12 the price is going to be in the future.</p> <p>13 Q. All right. So back to my original question:</p> <p>14 Your opinion as to Ms. Hills' future pharmaceutical</p> <p>15 costs is only based on you looking up the retail</p> <p>16 price of those medications in today's dollars, and</p> <p>17 assuming it for some period of time; true?</p> <p>18 A. Correct.</p> <p>19 Q. And would you agree that that does not</p> <p>20 require expertise to offer that opinion either from</p> <p>21 your medical background or your life care planner</p> <p>22 background; true?</p> <p>23 MS. PESCHEL: Objection to form.</p> <p>24 THE WITNESS: Little confusing. It</p> <p>25 does require my medical background in</p>	<p style="text-align: right;">Page 61</p> <p>1 have not treated Ms. Hills in the past, you do not</p> <p>2 intend to treat her in the future. Are both of</p> <p>3 those things correct?</p> <p>4 A. Correct.</p> <p>5 Q. You do not intend to monitor her</p> <p>6 medications, monitor her condition, or do anything</p> <p>7 of the kind; correct?</p> <p>8 A. True.</p> <p>9 Q. You do not consider her your patient and the</p> <p>10 patient privilege does not apply here; true?</p> <p>11 A. True.</p> <p>12 Q. And so, maybe it's just the word</p> <p>13 "recommendation" or you're recommending it. Are</p> <p>14 you truly asking her, or telling her to take this</p> <p>15 course of action, or are you just simply saying if</p> <p>16 she takes this course of action, it will cost X</p> <p>17 dollars?</p> <p>18 A. Again, my recommendations are based on what</p> <p>19 I -- on my training, and what I read in the</p> <p>20 reporting, and this is what I feel she is going to</p> <p>21 need in the future, and this is the associated</p> <p>22 costs.</p> <p>23 Q. But are you telling her to do this in the</p> <p>24 future?</p> <p>25 A. Well, I haven't had the conversation with</p>

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<p>1 her. I mean, I submitted the report to the</p> <p>2 attorneys and I would assume they would have showed</p> <p>3 it to her; right?</p> <p>4 Q. But, I mean, again in your capacity as a</p> <p>5 non-treater, should you be treating her what to do</p> <p>6 in the future?</p> <p>7 A. I mean, this is a different context; right?</p> <p>8 Because I'm not a treater. These are the</p> <p>9 recommendations.</p> <p>10 Q. Okay. And as to whether Ms. Hills has</p> <p>11 continued to take the Engality or the Dihydroergo</p> <p>12 -- how do you say that?</p> <p>13 A. Dihydroergotamine.</p> <p>14 Q. Yeah. As to whether Ms. Hills has continued</p> <p>15 to take those medications for the past six months,</p> <p>16 do you know?</p> <p>17 A. So I did review the records provided</p> <p>18 recently. I'll tell you which one. It's Baylor</p> <p>19 Scott & White neurology clinic. It's dated from</p> <p>20 June 27, 2019 through October 10, 2019. And she</p> <p>21 continued treating for her headaches. She reported</p> <p>22 taking the OCPs, which I didn't include in the life</p> <p>23 care plan, which were also working for her</p> <p>24 headaches and --</p> <p>25 Q. What are OCPs?</p>	<p>1 those records, but I didn't see them leading up to</p> <p>2 today. What -- did they show that she continued to</p> <p>3 take the Engality?</p> <p>4 A. Let me double-check on that. Do you mind if</p> <p>5 I look at this for a second?</p> <p>6 Q. No. No. Not at all.</p> <p>7 A. Yes, she was.</p> <p>8 Q. And what about the other one? The</p> <p>9 Dihydroergo --</p> <p>10 A. Yeah.</p> <p>11 Q. And what else is she taking?</p> <p>12 A. Toradol, Reglan or Metoclopramide, Xalatan,</p> <p>13 but that's for the eye, Cyclobenzaprine, Kurvelo.</p> <p>14 Q. What -- can you help me understand what each</p> <p>15 of these are prescribed for in her case?</p> <p>16 A. Hold on a second. Do you mind? So the</p> <p>17 Xalatan is an ophthalmic solution, the Engality is</p> <p>18 for the headaches, the Reglan is also for</p> <p>19 headaches, the Dihydroergotamine also for the</p> <p>20 headaches, Dihydroergot for severe headaches,</p> <p>21 Cyclobenzaprine also works for headaches, and the</p> <p>22 Kurvelo in this case is the contraceptive pill,</p> <p>23 also works for headaches.</p> <p>24 Q. Back to an earlier question. Can you</p> <p>25 explain -- help me understand how your particular</p>
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<p>1 A. Oral contraceptive pills.</p> <p>2 Q. What -- oral what?</p> <p>3 A. Contraceptive.</p> <p>4 Q. Contraceptive?</p> <p>5 A. Yeah.</p> <p>6 Q. And am I thinking the same thing? We're</p> <p>7 talking about a contraceptive pill? What does that</p> <p>8 have to do with treatment here?</p> <p>9 A. Yeah. It works for some kinds of headaches.</p> <p>10 Yeah.</p> <p>11 Q. Well, does it work for posttraumatic</p> <p>12 headaches?</p> <p>13 A. In her case it was. Yeah.</p> <p>14 Q. Well, is it typically used to treat</p> <p>15 posttraumatic headaches?</p> <p>16 A. It depends on the response of the patient.</p> <p>17 I mean, if it works.</p> <p>18 Q. Is it routinely prescribed for that purpose?</p> <p>19 A. The OCPs, no. It's -- to my understanding,</p> <p>20 I believe it's an off-label prescription, you know,</p> <p>21 an indication probably.</p> <p>22 Q. Okay. So oral contraceptives are not on the</p> <p>23 label prescribed for posttraumatic headaches; true?</p> <p>24 A. Not that I recall.</p> <p>25 Q. All right. So -- and I'm sure I do have</p>	<p>1 expertise is applied in offering an opinion that</p> <p>2 Ms. Hills will need this expensive headache</p> <p>3 medication for the duration of her life. How that</p> <p>4 number relies on expertise as opposed to simply</p> <p>5 looking up the price and multiplying?</p> <p>6 A. I'm having trouble understanding the</p> <p>7 question.</p> <p>8 Q. Let me ask you -- yeah, I agree. It was</p> <p>9 kind of convoluted. Let me start over.</p> <p>10 How did you apply your expertise in</p> <p>11 offering an opinion as to the price for the</p> <p>12 migraine medication that Ms. Hills will need in the</p> <p>13 future? How did you use your expertise?</p> <p>14 A. So, the price, again, I looked that up, as</p> <p>15 you said. Obviously, I mean, I don't know that by</p> <p>16 heart. So I identified the medication that I think</p> <p>17 she is going to need in the future, and I looked up</p> <p>18 the price, and I extended that throughout her</p> <p>19 lifetime.</p> <p>20 Q. And based on what you just said, that does</p> <p>21 not require your expertise to offer that opinion;</p> <p>22 true?</p> <p>23 MS. PESCHEL: Objection. Form.</p> <p>24 THE WITNESS: I mean, it does</p> <p>25 because I'm recommending the medication,</p>

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<p style="text-align: right;">Page 66</p> <p>1 and the price that I found, and, you</p> <p>2 know, doing the research for it. So it</p> <p>3 does.</p> <p>4 BY MR. PAYNE:</p> <p>5 Q. And what is the basis that you're</p> <p>6 recommending that medication?</p> <p>7 A. It's working for her headaches,</p> <p>8 posttraumatic headaches.</p> <p>9 Q. All right. The medical care itself. You</p> <p>10 rely on something called Fairhealth.org?</p> <p>11 A. The medical care -- you mean the injections,</p> <p>12 neurology visits, and the cervical MRI price? Yes,</p> <p>13 sir.</p> <p>14 Q. All right. As I think I've understood it,</p> <p>15 what you do is you insert -- you get a subscription</p> <p>16 to Fairhealth.org; correct?</p> <p>17 A. Yeah.</p> <p>18 Q. You insert the CPT codes, and you insert, I</p> <p>19 think, a ZIP code, and Fairhealth will spit out a</p> <p>20 number for you; right?</p> <p>21 A. Several. Yeah.</p> <p>22 Q. Okay. And that is the number that you use</p> <p>23 in terms of filling out, or imputing, or preparing</p> <p>24 your life care plan as far as what this medical</p> <p>25 care is going to cost in the future; correct?</p>	<p style="text-align: right;">Page 68</p> <p>1 service; true?</p> <p>2 A. Correct.</p> <p>3 Q. All right. And you agree generally -- it's</p> <p>4 a fair, and true accurate statement that a medical</p> <p>5 provider will accept less than what they charge for</p> <p>6 any particular service; true?</p> <p>7 A. It's possible. Depending on if they have a</p> <p>8 contract or not.</p> <p>9 Q. And a particular -- a notal example of that</p> <p>10 is the retail price that you have used for the</p> <p>11 cervical MRI was \$2,000 plus; right?</p> <p>12 A. Yeah.</p> <p>13 Q. And what Baylor Scott & White charged here,</p> <p>14 at least according to that document, Exhibit 2, was</p> <p>15 significantly less. True?</p> <p>16 A. It was -- what they charged was \$352 for the</p> <p>17 cervical MRI. Correct.</p> <p>18 Q. All right. And so, are you bringing -- are</p> <p>19 you applying anything independent based on your own</p> <p>20 expertise as a life care planner and medical doctor</p> <p>21 in offering those figures, are you simply relying</p> <p>22 on Fairhealth.org?</p> <p>23 A. I'm relying on the database that determines</p> <p>24 the cost of cervical MRIs, for example, in this</p> <p>25 case in that region.</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Yeah.</p> <p>2 Q. You do not rely on any other data source, or</p> <p>3 other information, or other statistical data, or</p> <p>4 anything other than Fairhealth.org in the procedure</p> <p>5 that you use; true?</p> <p>6 A. True.</p> <p>7 Q. All right. And as far as the particulars</p> <p>8 that Fairhealth relies on in giving you that data,</p> <p>9 can you explain to us how they arrive there? How</p> <p>10 they get there?</p> <p>11 A. So those are billed rates from providers in</p> <p>12 that area from insurance companies, meaning</p> <p>13 Medicare and private payers.</p> <p>14 Q. All right. But as to the particular data,</p> <p>15 where it comes from, the particular payors,</p> <p>16 particular billers, how large a server they use, or</p> <p>17 how large a sample they use, you do not know that</p> <p>18 information; true?</p> <p>19 A. I don't have the, you know, the explanation</p> <p>20 of benefits of each CPT code and service provider</p> <p>21 from the providers in that area. I don't have that</p> <p>22 raw data.</p> <p>23 Q. And as I think I understand it, what -- the</p> <p>24 number that is given to you is what is charged, not</p> <p>25 what is accepted by a provider to perform that</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. And do you know if Fairhealth utilizes</p> <p>2 different rates, like private insurance versus</p> <p>3 Medicare versus Medicare versus workers' comp? Do</p> <p>4 you know if they utilize all of that information,</p> <p>5 or any of it, or --</p> <p>6 A. They do use that information for the bill</p> <p>7 charges, not the contracted rates. Now Medicare</p> <p>8 has their own website where they show you how much</p> <p>9 they're paying in a given year. And if you up a</p> <p>10 private payer, I'm almost certain that that</p> <p>11 information is priority. I don't think they would</p> <p>12 share that. To my knowledge, I don't know if</p> <p>13 there's a database for BlueCross, or private payers</p> <p>14 in Texas.</p> <p>15 Q. But at least as far as the numbers you use,</p> <p>16 you're relying only on Fairhealth.org and no other</p> <p>17 database; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And nothing -- no independent analysis or</p> <p>20 investigation; true?</p> <p>21 A. I haven't done a survey of costs in that</p> <p>22 area. Correct.</p> <p>23 Q. And certainly, that amount is what you were</p> <p>24 noting your opinion as to the charges in the future</p> <p>25 is simply that it's the charges that might be</p>

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<p style="text-align: right;">Page 70</p> <p>1 anticipated; correct?</p> <p>2 A. Correct.</p> <p>3 Q. It's not what those providers would accept</p> <p>4 in satisfaction for the services that they</p> <p>5 provided; true?</p> <p>6 A. True.</p> <p>7 Q. And those, just like the pharmacy bills --</p> <p>8 and we may have already addressed this. None of</p> <p>9 the charges, pharmacy or medical, do you reduce to</p> <p>10 present value; true?</p> <p>11 A. True.</p> <p>12 Q. And likewise, your numbers do not reflect</p> <p>13 that those charges may be higher in the future, or</p> <p>14 lower in the future, or changed; true?</p> <p>15 A. True.</p> <p>16 Q. Did you visit with any of Ms. Hills'</p> <p>17 treating doctors?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you practice in Bell County?</p> <p>20 A. No.</p> <p>21 Q. And you recognized that the Fairhealth</p> <p>22 website has a disclaimer on it that there are</p> <p>23 limitations on its use; true?</p> <p>24 A. I believe there's something to that effect.</p> <p>25 Yeah.</p>	<p style="text-align: right;">Page 72</p> <p>1 on it?</p> <p>2 A. I don't recall that. But I do know for a</p> <p>3 fact that, at least that last time I checked, they</p> <p>4 have specific examples of how their database is</p> <p>5 used by life care planners. So they do acknowledge</p> <p>6 that.</p> <p>7 Q. Would it be fair to summarize those</p> <p>8 disclaimers as saying, we try really hard to be</p> <p>9 accurate, but we can be off. Is that fair?</p> <p>10 A. I mean, I -- you're saying here where does</p> <p>11 it say that?</p> <p>12 Q. Well, I'm just saying is that a good summary</p> <p>13 of that disclaimer?</p> <p>14 A. What I just read has nothing to do with what</p> <p>15 you said.</p> <p>16 Q. Well, does their disclaimer suggest, at</p> <p>17 least to the consumer, that you cannot or you</p> <p>18 should use caution in relying on our data, because</p> <p>19 while we try to be accurate, it can be inaccurate?</p> <p>20 A. Do you mind if I continue reading this?</p> <p>21 Q. Of course.</p> <p>22 A. So for Exhibit 6, that's the next page.</p> <p>23 Okay. Yes. I see what you're saying. Yeah.</p> <p>24 Q. And just generally speaking, is that an</p> <p>25 accurate summary of essentially what that says?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. And I'll hand you what I will mark as 5 and</p> <p>2 6, I think.</p> <p>3 (Exhibit Nos. 5 and 6 were marked</p> <p>4 for identification.)</p> <p>5 BY MR. PAYNE:</p> <p>6 Q. And I'll give you -- you can peruse it, and</p> <p>7 then we'll talk about it in a second.</p> <p>8 A. I'm good if you want to ask.</p> <p>9 Q. I don't -- not reading it word for word, but</p> <p>10 can you offer us just a general summary of kind of</p> <p>11 the disclaimer that they made?</p> <p>12 A. So for health consumer website -- again,</p> <p>13 mine is not consumer website because they have a</p> <p>14 public one, and I'm part of the, you know, the</p> <p>15 members of they're not for consumer public access</p> <p>16 website, which -- in their website, they</p> <p>17 specifically list life care planners as people that</p> <p>18 are using the software.</p> <p>19 So we acknowledge that much. So it</p> <p>20 considers to say, and your -- you can plan for this</p> <p>21 thoroughly and provided solely for personal</p> <p>22 consumer use, and not for any commercial</p> <p>23 professional research, litigation, or other</p> <p>24 purpose.</p> <p>25 Q. Do you know if your version has a disclaimer</p>	<p style="text-align: right;">Page 73</p> <p>1 A. So on Exhibit 6, it says, despite our</p> <p>2 efforts, the information on this site may be</p> <p>3 inaccurate, or incomplete, or out of date. We make</p> <p>4 no representation or guarantee that the information</p> <p>5 on the site is complete, accurate, or current.</p> <p>6 Q. Do you know whether Ms. Hills missed any</p> <p>7 work because of her headaches?</p> <p>8 A. I don't recall that.</p> <p>9 Q. Do you know if it affected her other daily</p> <p>10 activities?</p> <p>11 A. I don't recall that.</p> <p>12 Q. Do you know what Ms. Hills medical expenses</p> <p>13 have been in the past -- up to at least July of</p> <p>14 2019?</p> <p>15 A. That, I don't recall.</p> <p>16 Q. I'll represent to you it's somewhere in the</p> <p>17 neighborhood of \$13,000 or at least according to</p> <p>18 what's been provided to my office.</p> <p>19 And just so I'm clear, you understand</p> <p>20 that between 2016 and the middle of 2019, Ms. Hills</p> <p>21 has incurred medical expenses totalling</p> <p>22 approximately \$13,000. Do you understand that?</p> <p>23 A. If you represent that, I believe you. Yes,</p> <p>24 sir.</p> <p>25 Q. And your life care plan suggests that she</p>

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<p>1 will require treatment totalling how much per year?</p> <p>2 A. Total, a lower number of \$713,802 or a</p> <p>3 higher number of \$1,261,770.</p> <p>4 Q. And it looks like years of duration is 48.</p> <p>5 So what is that annually?</p> <p>6 A. Hold on. So annually it's \$26,623.80.</p> <p>7 Q. All right. And so, at least you're</p> <p>8 projections of approximately 20 or \$26,000 a year,</p> <p>9 that has not been borne out by her last three years</p> <p>10 of treatment; true?</p> <p>11 A. Are you saying incurred?</p> <p>12 Q. Yeah.</p> <p>13 A. Correct. Yeah.</p> <p>14 Q. So three years -- let's say -- let's call it</p> <p>15 12. Well, yeah, just because we can divide 12</p> <p>16 pretty easy by three. So that's about 4,000 a year</p> <p>17 that she's incurred in the past, plus -- and you're</p> <p>18 suggesting, what, 20-something each year in the</p> <p>19 future?</p> <p>20 A. \$26,323.80. Yeah.</p> <p>21 Q. All right. Dr. Miranda, you -- again, we've</p> <p>22 talked about you were hired by --</p> <p>23 A. I'm sorry.</p> <p>24 Q. Of course.</p> <p>25 A. This one was with the occipital nerve</p>	<p>1 time. You have billed The Carlson Law Firm \$7,200?</p> <p>2 A. Yes.</p> <p>3 Q. And what is that for? Is that just for the</p> <p>4 life care plan?</p> <p>5 A. Yes.</p> <p>6 Q. And that includes a rush fee?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And then you billed -- do you</p> <p>9 still bill \$2,500 for your deposition?</p> <p>10 A. I did today. Yeah.</p> <p>11 Q. All right. And if -- and I'm about done.</p> <p>12 So if it's two hours, you're not going to bill them</p> <p>13 any more, are you?</p> <p>14 A. I don't anticipate doing so.</p> <p>15 Q. And have you been asked to appear at trial</p> <p>16 in this case?</p> <p>17 A. I don't recall that, but if I need to go,</p> <p>18 I'll consider doing trial.</p> <p>19 Q. What do you bill for trial time?</p> <p>20 A. \$5,000.</p> <p>21 Q. Do you -- how about if it's up in Waco?</p> <p>22 A. I haven't -- is this in Waco? I didn't know</p> <p>23 that. I haven't thought about that. I don't think</p> <p>24 so.</p> <p>25 Q. Okay. At this time in the beginning of</p>
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<p>1 blocks, you know. The other one was an average</p> <p>2 annual cost of \$14,907.80. So that's -- the one we</p> <p>3 just discussed was the higher number, and the one I</p> <p>4 just said is the one without the occipital nerve</p> <p>5 blocks.</p> <p>6 Q. And to date, are you aware of Ms. Hills</p> <p>7 having any occipital nerve blocks?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Okay.</p> <p>10 A. But it was said she was recommended Botox</p> <p>11 injections, which might -- I don't recall doing</p> <p>12 specific research, but it might be more expensive</p> <p>13 than the occipital nerve blocks.</p> <p>14 Q. But again, kind of back to this theme, for</p> <p>15 the past three years, Ms. Hills has not had any</p> <p>16 type of occipital nerve blocks; true?</p> <p>17 A. Not that I recall. No.</p> <p>18 Q. All right. And you -- at least one of your</p> <p>19 averages, the higher average, suggests that she</p> <p>20 will need them annually for the next 48 years;</p> <p>21 true?</p> <p>22 A. Yes. Well, two.</p> <p>23 Q. Two per year?</p> <p>24 A. Yeah.</p> <p>25 Q. All right. So again, you billed for your</p>	<p>1 2020, how many life care plans have you prepared in</p> <p>2 this person injury context?</p> <p>3 A. North of 250.</p> <p>4 Q. And how many depositions have you given?</p> <p>5 A. Deposition trial, north of 50.</p> <p>6 Q. How many trial appearances have you given?</p> <p>7 A. I'm going to guess six to eight.</p> <p>8 Q. When was the last one you gave?</p> <p>9 A. Yesterday.</p> <p>10 Q. Really?</p> <p>11 A. Yeah.</p> <p>12 Q. In Travis County?</p> <p>13 A. Yes.</p> <p>14 Q. What was your opinion that you offered?</p> <p>15 A. It was a cervical spine injury.</p> <p>16 Q. And what -- and did you offer life care</p> <p>17 opinions or as a treating physician?</p> <p>18 A. No. As a life care planner.</p> <p>19 Q. Okay. And what -- generally speaking, what</p> <p>20 was your recommendation in that case?</p> <p>21 A. That was a cervical spinal cord stimulator</p> <p>22 trial, and implant, and epidural steroid</p> <p>23 injections.</p> <p>24 Q. Have you testified live at trial in an</p> <p>25 instance involving migraine headaches or</p>

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<p style="text-align: right;">Page 78</p> <p>1 posttraumatic headaches?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Have you offered deposition testimony on</p> <p>4 occasion involving posttraumatic headaches or an</p> <p>5 opinion involving that?</p> <p>6 A. They're rare. Not that I recall.</p> <p>7 Q. I did fail to ask you for one, but do you</p> <p>8 still have an Excel spreadsheet of all of your</p> <p>9 testimony?</p> <p>10 A. I do. It wasn't asked of me, but I have</p> <p>11 one. Yeah.</p> <p>12 Q. And is it up-to-date, including yesterday?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Well, Dr. Miranda, it's always a</p> <p>15 pleasure. I appreciate you being so candid with</p> <p>16 me.</p> <p>17 A. Sure.</p> <p>18 MR. PAYNE: And with that, I pass</p> <p>19 the witness.</p> <p>20 - - -</p> <p>21 CROSS-EXAMINATION</p> <p>22 - - -</p> <p>23 BY MS. PESCHEL:</p> <p>24 Q. Good afternoon, Dr. Miranda.</p> <p>25 A. Hi.</p>	<p style="text-align: right;">Page 80</p> <p>1 lesioning, spinal cord stimulators, and things of</p> <p>2 that nature.</p> <p>3 So we get a better expertise doing those</p> <p>4 procedures in the fellowship of pain medicine. I</p> <p>5 was grandfathered into the brain injury medicine</p> <p>6 board.</p> <p>7 Q. Okay. And what do you mean by that?</p> <p>8 A. I didn't have to do a fellowship to sit for</p> <p>9 the board.</p> <p>10 Q. Okay. But you -- what did sitting for the</p> <p>11 board entail?</p> <p>12 A. Well, you have to be board certified in</p> <p>13 physical medicine and rehabilitation, and have</p> <p>14 experience treating people with brain injuries.</p> <p>15 Q. Okay. And then you sit for an exam?</p> <p>16 A. You sit for an exam. Yeah.</p> <p>17 Q. Okay. And is it something extra to pursue</p> <p>18 -- like, do most physical medicine rehab doctors</p> <p>19 also have board certifications in pain medicine, or</p> <p>20 is that something -- are those two separate</p> <p>21 certifications?</p> <p>22 A. They're two separate ones. Yeah.</p> <p>23 Q. Okay. And it is my -- so you testified</p> <p>24 earlier you were certified as a life care planner;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. I just want to kind of circle back to a few</p> <p>2 things. Now, you stated that your speciality areas</p> <p>3 were pain management, physical medicine,</p> <p>4 rehabilitation, and brain injury; is that correct?</p> <p>5 A. Brain injury and medicine. Yeah.</p> <p>6 Q. Okay. And for the jury, can you please just</p> <p>7 briefly describe what each of those specialty areas</p> <p>8 are?</p> <p>9 A. So, physical medicine and rehabilitation,</p> <p>10 the residency entails mostly an in-patient and</p> <p>11 out-patient setting. The in-patient setting, we</p> <p>12 take care of patients that have more serious</p> <p>13 musculoskeletal, or central nervous system</p> <p>14 conditions, like strokes, spinal cord injury, hip</p> <p>15 replacements, multiple fractures, and multiple</p> <p>16 bones, polytrauma, subarachnoid hemorrhage. What</p> <p>17 else? Joint replacements, cerebral palsy. That's</p> <p>18 the inpatient side. On the outpatient side, we</p> <p>19 take care of patients that have either headaches,</p> <p>20 or neck pain, back pain, or things of that nature.</p> <p>21 Yeah.</p> <p>22 Q. Okay. And --</p> <p>23 A. And, I'm sorry, so the pain medication</p> <p>24 component is where we trained on how to do a spinal</p> <p>25 injections, you know, like epidurals, frequency of</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yup.</p> <p>2 Q. Can you explain to the jury what a life care</p> <p>3 planner does?</p> <p>4 A. So like in this case, a life care planner --</p> <p>5 when I can, I examine the patient, I interview the</p> <p>6 patient, I review the medical records, and I make</p> <p>7 recommendations to future care, and the cost</p> <p>8 related to that future care.</p> <p>9 Q. Okay. And are there certain requirements</p> <p>10 that you have to become a certified life care</p> <p>11 planner?</p> <p>12 A. Well, the overwhelming majority of life care</p> <p>13 planners are not doctors. They are -- they can be</p> <p>14 vocational rehab experts, they can be nurses,</p> <p>15 physical therapist, or occupational therapist,</p> <p>16 psychologist.</p> <p>17 So you have to have some form of</p> <p>18 background in the healthcare arena, and then you</p> <p>19 have to complete 80 credit hours. And then --</p> <p>20 that's online. And then 40 credit hours done at a</p> <p>21 life center. And then you sit for an exam and you</p> <p>22 pass.</p> <p>23 Q. Okay. And why is there a need for life care</p> <p>24 planners versus simply asking a doctor who's</p> <p>25 treating a patient what that future care is going</p>

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1 to cost them?	1 (At this time, back on the record.)
2 A. So the life care planner, you know, at least	2 THE VIDEOGRAPHER: We are back on
3 in my experience of treating conditions like this,	3 the record at 5:17 p.m.
4 and we have seen some extents what the outlook is	4 BY MS. PESCHEL:
5 for some of these patients. And based on that	5 Q. All right. Thank you for taking that short
6 experience, and what we learned in the courses of	6 break and taking the time to review those records,
7 life care planning, and make the recommendations of	7 Dr. Miranda.
8 future care.	8 A. Yeah. No problem.
9 Mind you though, being a physical medicine	9 Q. I marked them as Exhibit 7. Have you had
10 and rehab doctor, you know, and pain medicine, I	10 the opportunity to look through the pages handed to
11 didn't necessarily have to be a certified life care	11 you as Exhibit 7?
12 planner, but that's why I wanted to have that extra	12 A. Yes, ma'am.
13 training.	13 (Exhibit No. 7 was marked for
14 Q. Okay. But do you typically see treating	14 identification.)
15 doctors who are treating a patient actually going	15 BY MS. PESCHEL:
16 out and telling their patients what this future	16 Q. Okay. And so, when you wrote your report
17 care if going to cost without being a life care	17 and reviewed Ms. Hills' records, you did not have
18 planner?	18 the opportunity to review any of her prior records,
19 A. Really rare. I've never seen it.	19 did you?
20 Q. Okay. And --	20 A. No. Prior to the fall.
21 A. With some exceptions like talking about	21 Q. Prior to the fall. Correct. So your
22 cervical recommendation. I've seen that with an	22 opinions at that time were based on just -- they
23 associated cost. So but that exception, I don't	23 were based on your physical examination?
24 recall seeing any other scenario.	24 A. Physical examination, medical records I
25 Q. Okay. So for something 30 or 40 years down	25 reviewed, and my training, and expertise.
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1 the line?	1 Q. Okay. And that was her record review of --
2 A. Something like that.	2 not just got Scott & White records, but also
3 Q. Okay. And who certifies life care planners?	3 chiropractic records and pain management records;
4 A. It's International Commission and Healthcare	4 is that correct?
5 Certification.	5 A. I reviewed the pain management records as
6 Q. Okay. And what kind of organization is	6 well. Yeah. Correct.
7 that?	7 Q. And is it typical or industry standard for a
8 A. It's an organization that basically	8 life care planner to actually perform a physical
9 maintains the standards, and publications of the	9 examination before creating a life care plan?
10 standards and articles regarding life care	10 A. You don't have to.
11 planning.	11 Q. Okay. And what benefit does performing a
12 Q. Where are they out of?	12 physical examination provide you?
13 A. I don't recall that.	13 A. A physical exam can correlate things you
14 Q. Okay. Earlier you got a lot of questions	14 already suspect from reading the records and
15 regarding your basis for your opinions as to	15 talking to the patient.
16 Ms. Hills having posttraumatic headaches, including	16 Q. Okay. And in this case when you reviewed
17 questions regarding her past medical records.	17 Rose's records, and then you performed your
18 What I'd like to do is hand you a stack	18 physical exam, what specific findings from your
19 of records that I actually received yesterday	19 physical exam corroborated her records?
20 evening. And I would like to go off the record,	20 A. So mostly the tenderness in her neck and the
21 and take a short break, and let you look through	21 limited range of motion of her cervical spine.
22 these, if that's okay.	22 Q. Okay. And you just today had the
23 THE VIDEOGRAPHER: We are off the	23 opportunity to review, I want to say, past records
24 record 4:52 p.m.	24 all the way from around May or June 2016, which
25 (At this time, off the record.)	25 would be months prior to this incident, and back

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<p style="text-align: right;">Page 86</p> <p>1 all the way to -- I want to say they go to 2011 or</p> <p>2 '12?</p> <p>3 A. 2008, I believe.</p> <p>4 Q. 2008? Okay.</p> <p>5 A. Or something like that.</p> <p>6 Q. Is that correct?</p> <p>7 A. I think it's 2008. Yeah.</p> <p>8 Q. Okay. From your review of those records</p> <p>9 here today, is there anything in those records that</p> <p>10 makes you change your opinions?</p> <p>11 A. No, ma'am.</p> <p>12 Q. Is there anything in those records that</p> <p>13 indicates to you that Ms. Hills was having any kind</p> <p>14 of active treatment for ongoing migraine issues</p> <p>15 prior to this fall?</p> <p>16 A. Not that I can think of.</p> <p>17 Q. Or actually, is there a difference between</p> <p>18 migraines and posttraumatic headaches?</p> <p>19 A. Yeah. So the intensity of a posttraumatic</p> <p>20 headache can be worse. You know, location can be</p> <p>21 more generalized. The frequency could be more, you</p> <p>22 know.</p> <p>23 Q. Okay. And did you see any medications that</p> <p>24 she was actively taking in that time period prior</p> <p>25 to this fall back to 2008 that would indicate that</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. What is a herniation?</p> <p>2 A. So a disc herniation is a displacement of</p> <p>3 one of the discs of the -- in her case, the</p> <p>4 cervical spine or the neck. Basically, the</p> <p>5 structure that moved in relation to where it was</p> <p>6 originally. It's displaced.</p> <p>7 Q. Okay. Is it common -- do you see patients</p> <p>8 in your practice spend thousands of dollars for</p> <p>9 medication needlessly?</p> <p>10 A. No.</p> <p>11 Q. If they're not in pain?</p> <p>12 MR. PAYNE: Objection. Leading.</p> <p>13 THE WITNESS: No. They were</p> <p>14 medications -- in my case, they're in</p> <p>15 pain.</p> <p>16 BY MS. PESCHEL:</p> <p>17 Q. And you probably -- in your practice, do you</p> <p>18 get a sense if somebody is being honest with you?</p> <p>19 A. I can. I mean, I'm not perfect obviously.</p> <p>20 I mean, I take them at face value.</p> <p>21 Q. Did you feel like when you met with</p> <p>22 Ms. Hills, and you examined her that she was being</p> <p>23 truthful?</p> <p>24 A. Yeah.</p> <p>25 Q. I want to kind of switch gears a little bit,</p>
<p style="text-align: right;">Page 87</p> <p>1 she was having the same injuries that you found her</p> <p>2 to be diagnosed with from this fall?</p> <p>3 A. Not that I can think of.</p> <p>4 Q. Are the injuries that Ms. Hills sustained</p> <p>5 after this fall, are those similar to injuries you</p> <p>6 treat in your practice on a daily basis?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. And is it common for a neck injury to cause</p> <p>9 a posttraumatic headache?</p> <p>10 A. It can. Yeah.</p> <p>11 Q. And it's not necessarily going to be an</p> <p>12 immediate thing, is it?</p> <p>13 MR. PAYNE: Objection. Leading.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MS. PESCHEL:</p> <p>16 Q. How long can it take for a posttraumatic</p> <p>17 headache to set in?</p> <p>18 A. My experience, it could be a week or</p> <p>19 sometimes more.</p> <p>20 Q. Okay. Can you explain for the jury, because</p> <p>21 you talked a little bit about this that she had</p> <p>22 some disc issues with her spine. What is the disc</p> <p>23 -- I think you called it a herniation; is that</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 and talk about the database you use when coming up</p> <p>2 with the numbers in your life care plan.</p> <p>3 Are you familiar with the methodology</p> <p>4 typically accepted in the field of life care</p> <p>5 planning?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. And the methodology that you used to prepare</p> <p>8 Ms. Hills' life care plan, is that consistent with</p> <p>9 the methodology you're familiar with?</p> <p>10 MR. PAYNE: Objection. Leading.</p> <p>11 THE WITNESS: Yes, ma'am.</p> <p>12 BY MS. PESCHEL:</p> <p>13 Q. And what methodology is that?</p> <p>14 A. The methodology that I use here is the</p> <p>15 methodology that's used by life care planners.</p> <p>16 Like I said, when you can you examine the patient,</p> <p>17 you do a physical exam, I interview the patient, I</p> <p>18 review the medical records. And then you</p> <p>19 determine, you know, the future care needs of that</p> <p>20 patient. And then you calculate the associated</p> <p>21 costs of that future care.</p> <p>22 Q. And a life care plan is not necessarily done</p> <p>23 to anticipate all future needs?</p> <p>24 A. Correct. This is a minimal care life care.</p> <p>25 Yeah.</p>

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<p>1 Q. Okay. On Exhibit 2 -- when we are talking</p> <p>2 about Exhibit 2, are you familiar with different</p> <p>3 medical facilities, as you're a medical</p> <p>4 professional, that charge both professional charges</p> <p>5 and then they charge separate facility charges?</p> <p>6 A. Yes.</p> <p>7 Q. Is that quite common?</p> <p>8 A. Yes, ma'am.</p> <p>9 MR. PAYNE: Objection. Leading.</p> <p>10 BY MS. PESCHEL:</p> <p>11 Q. So, if I portray to you that Exhibit 2 is</p> <p>12 just the professional charges -- do you see that</p> <p>13 there?</p> <p>14 A. Yes.</p> <p>15 Q. So when you're being asked questions about</p> <p>16 the cost of an MRI -- if I portray to you that</p> <p>17 Baylor Scott & White has facility charges as well,</p> <p>18 you're not getting the full cost of the MRI just by</p> <p>19 the professional charges; would that be correct?</p> <p>20 MR. PAYNE: Objection. Leading.</p> <p>21 THE WITNESS: Yes. Yeah. That's</p> <p>22 correct.</p> <p>23 BY MS. PESCHEL:</p> <p>24 Q. Okay. Are all the opinions that you gave</p> <p>25 today within a reasonably degree of medical</p>	<p>1 do you recall that?</p> <p>2 A. I saw a mention of history of migraines.</p> <p>3 Yes, sir.</p> <p>4 Q. Including the date -- and we've already</p> <p>5 talked about this. She referenced a history of</p> <p>6 migraine headaches on the date of the event at the</p> <p>7 Sam's Club; true?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know if -- you've said you've now</p> <p>10 prepared about 250 of these life care plans; right?</p> <p>11 A. North of that.</p> <p>12 Q. More than that. Do you know and have you</p> <p>13 verified if any plaintiff in a personal injury</p> <p>14 lawsuit has implemented a life care plan that you</p> <p>15 recommended?</p> <p>16 A. I don't recall that.</p> <p>17 Q. Do you know if that's ever been done?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Do you know if Ms. Hills has implemented</p> <p>20 your plan?</p> <p>21 A. Well, I know she continues to treat</p> <p>22 recently. But I don't know for certainty if she</p> <p>23 follows the plan.</p> <p>24 Q. Well, in fact, you would have seen Ms. Hills</p> <p>25 on exactly one occasion when you performed the</p>
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<p>1 certainty?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And was your prediction for her future</p> <p>4 treatment based on your experience, expertise,</p> <p>5 training, education, and review of the relevant</p> <p>6 medical literature?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Is there anything else we haven't asked you</p> <p>9 that you think is significant?</p> <p>10 A. Not that I can think of.</p> <p>11 Q. Okay.</p> <p>12 MS. PESCHEL: I'll pass the</p> <p>13 witness.</p> <p>14 - - -</p> <p>15 REDIRECT EXAMINATION</p> <p>16 - - -</p> <p>17 BY MR. PAYNE:</p> <p>18 Q. Doctor, you've now at the request of</p> <p>19 plaintiff's counsel have reviewed at least some of</p> <p>20 Ms. Hills' medical records predating the event at</p> <p>21 the Sam's Club; correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you saw at least three references to a</p> <p>24 history of migraine headaches that predate the</p> <p>25 event at Sam's. Do you -- just generally speaking,</p>	<p>1 physical examination; correct?</p> <p>2 A. Yes.</p> <p>3 Q. You did not meet with her again to actually</p> <p>4 go over your recommendations; true?</p> <p>5 A. True.</p> <p>6 Q. I think you said earlier you would assume</p> <p>7 that her attorneys would share your life care plan</p> <p>8 with her, but that's all that is is an assumption;</p> <p>9 true?</p> <p>10 A. Yeah. I haven't confirmed if they have or</p> <p>11 not.</p> <p>12 Q. And so you have not -- just so we are clear:</p> <p>13 You have not sat down with Ms. Hills and said,</p> <p>14 these are my recommendations for you in the future;</p> <p>15 true?</p> <p>16 A. True.</p> <p>17 Q. And you don't know if that's ever been done;</p> <p>18 true?</p> <p>19 A. By somebody other than me? I don't know</p> <p>20 that. Yeah.</p> <p>21 Q. Okay. On the -- do you know -- have you</p> <p>22 reviewed with any particularity Ms. Hills' past</p> <p>23 medical charges or what her providers have accepted</p> <p>24 for her charges?</p> <p>25 A. I don't recall with exact detail of that.</p>

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<p style="text-align: right;">Page 94</p> <p>1 No.</p> <p>2 Q. All right. So at to what Baylor charged her</p> <p>3 facility fee or otherwise for the MRI, you simply</p> <p>4 don't know; right?</p> <p>5 A. Well, I mean, what you showed me and I do</p> <p>6 have some billing records. But to my recollection</p> <p>7 right now, I can't tell you, you know, item by item</p> <p>8 what they are.</p> <p>9 Q. And so, as far as any of the treatment that</p> <p>10 she's had in the past, what was billed for it, and</p> <p>11 what she -- and what was accepted for it, that was</p> <p>12 not a part of the numbers that you arrived at as</p> <p>13 far as future care; true?</p> <p>14 A. Well, remember though the database assumes</p> <p>15 that, you know, multiple providers are billing in</p> <p>16 that data. But I did not specifically include</p> <p>17 Baylor Scott & White's numbers in my projections.</p> <p>18 Q. Do you consider yourself to be in the best</p> <p>19 place for this case to offer an opinion as to</p> <p>20 causation?</p> <p>21 A. I feel good enough to make that</p> <p>22 recommendation. Yes, sir.</p> <p>23 Q. And that's based on a review of medical</p> <p>24 records that postdate the accident, up until 30</p> <p>25 minutes ago, and at most, a one-hour physical</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Why did you move to Texas from Florida?</p> <p>2 A. So I lived in Florida for several years.</p> <p>3 You know, I moved to Miami, Gainesville,</p> <p>4 Jacksonville, and I was waiting for my wife to</p> <p>5 finish her training. And we talked about staying</p> <p>6 in Florida, but together we decided to leave the</p> <p>7 state. We've heard good things about Austin. So</p> <p>8 here we are.</p> <p>9 Q. Is there any other reason?</p> <p>10 A. Not that I can think of.</p> <p>11 Q. Did it have anything to do with some</p> <p>12 allegations about overprescribing pain medication?</p> <p>13 A. No. I did have several lawsuits regarding</p> <p>14 deformation from several pharmacies, and you know,</p> <p>15 it was litigated. One went to trial, and the other</p> <p>16 three settled out of court. And I have attorneys</p> <p>17 for that, if you're interested in talking to them.</p> <p>18 Q. Did that have anything to do with you moving</p> <p>19 your practice from Florida to Texas?</p> <p>20 A. It wasn't a pleasant experience, you know,</p> <p>21 but I have family in Florida. And the town where</p> <p>22 that occurred was in Lake City, Florida in</p> <p>23 Gainesville. I have family in Orlando so I had, you</p> <p>24 know, some ties. And we still go to Florida quite</p> <p>25 often. We have family there, you know. But at the</p>
<p style="text-align: right;">Page 95</p> <p>1 examination of the plaintiff; true?</p> <p>2 A. And also my experience and training. Yes,</p> <p>3 sir.</p> <p>4 Q. Do you think Ms. Hills' treating doctors</p> <p>5 would be in a better position to offer an opinion</p> <p>6 as to causation?</p> <p>7 A. I mean, I don't feel in this particular</p> <p>8 case. I mean, they also agree with diagnosis of</p> <p>9 posttraumatic headaches, by the way.</p> <p>10 Q. And again, we've talked about that. And</p> <p>11 their basis and your basis of posttraumatic</p> <p>12 headaches is based on what she told you and them</p> <p>13 only; true?</p> <p>14 A. True.</p> <p>15 Q. And you do not intend to be the physician --</p> <p>16 you've recommended, in the alternative, these nerve</p> <p>17 blocks; true?</p> <p>18 A. I'm sorry? What?</p> <p>19 Q. You have offered, in the alternative, that</p> <p>20 Ms. Hills undergo these nerve blocks; true?</p> <p>21 A. That's the other more -- less conservative</p> <p>22 life care plan. Yes.</p> <p>23 Q. And is it your intention that you would be</p> <p>24 the physician to perform those?</p> <p>25 A. Nope.</p>	<p style="text-align: right;">Page 97</p> <p>1 end of the day, we just decided to leave.</p> <p>2 Q. Do you have hospital privileges at the</p> <p>3 Baylor facilities? Baylor Scott & White</p> <p>4 facilities?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you have hospital privileges at the St.</p> <p>7 David facilities?</p> <p>8 A. No.</p> <p>9 Q. What about the Seton, which I guess is</p> <p>10 now --</p> <p>11 A. Ascension?</p> <p>12 Q. Yeah.</p> <p>13 A. No.</p> <p>14 Q. Do you have hospital privileges with</p> <p>15 Ascension?</p> <p>16 A. No, sir.</p> <p>17 Q. Is it fair to say you do not consider</p> <p>18 yourself an expert in finance, accounting, or</p> <p>19 economics; true?</p> <p>20 A. True.</p> <p>21 Q. Okay.</p> <p>22 MR. PAYNE: Doctor, again, I thank</p> <p>23 you for your time. That's all I have.</p> <p>24 I pass the witness.</p> <p>25 THE WITNESS: Thank you.</p>

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Page 98	Page 100
1 MS. PESCHEL: And I promise I'll be	1 WITNESS CORRECTIONS AND SIGNATURE
2 quick.	2
3 MR. PAYNE: Ut-oh.	3 Please indicate changes on this sheet of
4 MS. PESCHEL: I have one follow-up.	4 paper, giving the change, page number, line
5 THE WITNESS: Don't get up out of	5 number and reason for the change. Please sign
6 the chair.	6 each page of changes.
7 MS. PESCHEL: I know. I'm sorry.	7 PAGE/LINE CORRECTION REASON FOR CHANGE
8 - - -	8 _____
9 RECROSS-EXAMINATION	9 _____
10 - - -	10 _____
11 BY MS. PESCHEL:	11 _____
12 Q. So earlier you testified that when you used	12 _____
13 the Fairhealth database to determine future costs,	13 _____
14 it's not predicated on your insurance reimbursement	14 _____
15 rates; correct?	15 _____
16 A. Yes.	16 _____
17 Q. And if you were to utilize the database that	17 _____
18 was predicated on insurance reimbursement rates,	18 _____
19 would that be proper methodology for a life care	19 _____
20 planner?	20 _____
21 A. No.	21 _____
22 Q. Why not?	22 _____
23 A. We don't use any collateral source when we	23 _____
24 do our costing analysis. It's part of the	24 _____
25 standards of life care planning.	25 _____
Page 99	Page 101
1 Q. Okay.	1 _____
2 MS. PESCHEL: That is my last	2 _____
3 question, so I will reserve.	3
4 MR. PAYNE: All right. This	4 _____
5 doesn't have to be on the -- it really	5 HECTOR MIRANDA-GRAJALES, M.D.
6 doesn't have to be on either record. So	6
7 we can go off.	7 I, HECTOR MIRANDA-GRAJALES, M.D., have read the
8 THE VIDEOGRAPHER: Okay. This --	8 foregoing transcript and hereby affix my
9 we are off the record at 5:34 p.m.	9 signature that same is true and correct,
10 - - -	10 except as noted on the previous page(s), and
11 (Whereupon, the videotape	11 that I am signing this before a Notary Public.
12 deposition of HECTOR MIRANDA-GRAJALES,	12 _____
13 M.D. concluded at 5:34 p.m.)	13 HECTOR MIRANDA-GRAJALES, M.D.
14	14 State of Texas)
15	15 County of _____)
16	16
17	17 Before me, _____, on this day
18	18 personally appeared HECTOR MIRANDA-GRAJALES,
19	19 M.D., known to me or proved to me under oath
20	20 or through _____
21	21 (description of identification card or other
22	22 document), to be the person whose name is
23	23 subscribed to the foregoing instrument and
24	24 acknowledge to me that they executed the same
25	25 for the purposes and consideration

**ROSE HILLS vs SAM'S EAST, INC., ET AL.
Hector Miranda-Grajales, M.D. on 01/16/2020**

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<p align="right">Page 102</p> <p>1 therein expressed.</p> <p>2 Given under my hand and seal of office on</p> <p>3 this, the ____ day of _____, 2020.</p> <p>4 _____</p> <p>5 Notary Public for and in</p> <p>6 The State of Texas</p> <p>7 Commission Expires _____</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p align="right">Page 103</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2 TO THE VIDEOTAPE DEPOSITION OF</p> <p>3 HECTOR MIRANDA-GRAJALES, M.D.</p> <p>4 TAKEN ON JANUARY 16, 2020</p> <p>5</p> <p>6 I, Noelle R. Nevius, a Notary in and</p> <p>7 for the State of Texas, hereby certify that</p> <p>8 this deposition transcript is a true record of</p> <p>9 the videotape testimony given by the witness</p> <p>10 name herein, after said witness was duly</p> <p>11 sworn/affirmed by me.</p> <p>12 I further certify that I am neither</p> <p>13 attorney nor counsel for, related to, nor</p> <p>14 employed by any of the parties to the action</p> <p>15 in which this testimony was taken. Further, I</p> <p>16 am not a relative or employee of any attorney</p> <p>17 of record in this cause, nor do I have a</p> <p>18 financial interest in the action.</p> <p>19 The original videotape deposition</p> <p>20 transcript was delivered to the attorney party</p> <p>21 who asked the first question appearing in the</p> <p>22 transcript on January 16, 2020. Brett Payne</p> <p>23 was the attorney present at the time of taking</p> <p>24 this videotape deposition.</p> <p>25</p> <p>_____ Noelle R. Nevius Notary in and for The State of Texas</p>	

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ROSE HILLS,	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 6:18-cv-301-ADA
	§	
SAM'S EAST, INC., SAM'S CLUB, and	§	
WAL-MART, INC., formerly known as	§	
WAL-MART STORES, INC.,	§	
Defendants	§	

PLAINTIFF ROSE HILL'S EXPERT DISCLOSURES

To: Defendants, Sam's East Inc., Sam's Club, and Wal-Mart, Inc., formerly known as Wal-Mart Stores, Inc., by and through their attorneys of record Brett H. Payne and Katie McLean, WALTERS, BALIDO & CRAIN, L.L.P., 9020 N. Capital of Texas Highway, Building II, Suite 225, Austin, Texas 78759

Plaintiff, ROSE HILLS makes these expert disclosures as required by Federal Rule of Civil Procedure 26 (a)(2).

**I.
A. IDENTITY OF EXPERTS**

1. Plaintiff may use the following persons at trial to present evidence under Federal Rule of Evidence 702, 703, or 705:

a. Retained Expert Witnesses

1) Jason T. English, M.S., CSP, P.E.
543 William D Fitch Parkway
Suite 112
College Stations, TX 77845
(979)431-0702

2) Dr. Hector A. Miranda-Grajales, MD, FAAPM&R, CLCP
4201 Bee Caves Rd.
Suite C-213
West Lake Hills, Texas 78746

(512) 960-4717

b. Non-Retained Expert Witnesses

Pain Specialists of Austin

Gary L. Heath, MD

Including its physicians, nurses, employees, staff, and records custodians

1210 South 31st Street

Temple, Texas 76504

(512) 485-7200

Baylor Scott & White Health Medical Center & Clinics—Temple

Jason Noel Collins, MD

Carla Christine Khalaf McStay, MD

Garrett Fitzpatrick Frantz, MD

Dorian Frederick Drigalla, MD

David Harold Uhrbrock, MD

Including its physicians, nurses, employees, staff, and records custodians

2401 South 31st Street

Temple, Texas 76508

(254) 724-2111

Baylor Scott & White Health Medical Center & Clinics—Temple Westfield Clinic

Jennifer Konvicka Flory, MD

Including its physicians, nurses, employees, staff, and records custodians

7556 Honeysuckle Road

Temple, Texas 76502

(254) 742-7400

Baylor Scott & White Health – Scott & White Pavilion

Christopher Jason Burnett, MD

Jennifer Konvicka Flory, MD

Christopher Mark Sirianni, MD

Elwood Fray Williams, MD

Christina Maria Cabret-Aymat, MD

Bret Wardle, PT

Including its physicians, nurses, employees, staff, and records custodians

1815 South 31st Street

Temple, Texas 76504

(254) 724-2111

Comprehensive Injury Treatment Services

Patrick McHorse, DC

Ronald M. George, DC

Chris Price, DC

Including its chiropractors, physicians, physical therapists, nurses, nurse practitioners, employees, staff, and records custodians
1602 West Avenue A, Suite B
Temple, Texas 76504
(254) 899-2225

B. INFORMATION FROM RETAINED OR SPECIALLY EMPLOYED EXPERTS

2. The following persons are those whom Plaintiff has retained or specially employed to provide expert testimony or whose duties as Plaintiff's employee regularly involve giving expert testimony:

Jason T. English, M.S., CSP, P.E.

Dr. Hector Miranda-Grajales, MD, FAAPM&R, CLCP

3. Plaintiff attaches a written report for each retained or specially employed expert. Each report is prepared and signed by the expert and contains the following:

- i. A complete statement of all opinions the expert will express and the basis and reasons for them.
- ii. The facts or data considered by the expert in forming the opinions.
- iii. Any exhibits that will be used to summarize or support the opinions.
- iv. A curriculum vitae, résumé, or other listing of each expert's qualifications.
- v. A list of all publications authored by the expert in the previous ten years.
- vi. A list of all other cases in which the expert testified as an expert at trial or by deposition during the previous four years.
- vii. A statement of the compensation to be paid for the study and testimony in the case.

C. INFORMATION FROM NONRETAINED EXPERTS

4. The following persons are those who are not required to provide a written report: physicians, nurses, employees, staff, and records custodians for:

Baylor Scott & White Health Medical Center & Clinics- Temple;
Baylor Scott & White Health Medical Center & Clinics- Temple Westfield Clinic;
Baylor Scott & White Health Medical Center & Clinics- Scott & White Pavilion
Comprehensive Injury Treatment Services
Pain Specialists of Austin.

5. Pursuant to FED. R. CIV. P. 26(a)(2)(C) for the above identified nonretained experts

Plaintiff identifies the following:

- a. The subject matter on which the expert is expected to present evidence.
- b. A summary of the facts and opinions on which the expert is expected to testify.

The experts listed above who are health care providers may testify about the health care provided to Plaintiff and other subjects or issues within their expertise, to include but not limited to:

- (a) the injuries Plaintiff sustained as a result of the incident made the basis of this lawsuit;
- (b) that the incident was a cause of Plaintiff's injuries;
- (c) their diagnoses and prognoses of Plaintiff's condition;
- (d) that Plaintiff's injuries were caused or aggravated by the incident made the basis of this lawsuit;
- (e) the treatment they provided to Plaintiff;
- (f) that Plaintiff suffered pain and physical and mental impairment in the past;
- (g) that Plaintiff may suffer pain and physical and mental impairment in the future;
- (h) that the services provided to Plaintiff were medically necessary;
- (i) that the charges for the medical services were reasonable at the time and place they were provided;
- (j) that Plaintiff may or will require medical treatment in the future; and
- (k) the reasonable charges for any future necessary medical services.

For a further explanation of the opinions of the nonretained experts identified above see the provided medical records.

Plaintiff reserves the right to elicit expert testimony from individuals designated by the Defendant and any persons listed as persons with knowledge of relevant facts should they be so qualified.

Respectfully Submitted,

THE CARLSON LAW FIRM, P.C.
2010 SW HK Dodgen Loop, Suite 201
Temple, Texas 76504
(254) 771-5688
FAX (254) 771-0655

By: /s/ Julie L. Peschel
Julie L. Peschel
SBN: 24052308
jpeschel@carlsonattorneys.com
Philip J. Koelsch
SBN: 24110103
pkoelsch@carlsonattorneys.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by email and certified mail on this the 18th day of July, 2019.

VIA EMAIL: katie.sacra@wbclawfirm.com / paynevfax@wbclawfirm.com

VIA CMRRR: 91 7199 9991 7035 3568 0296

Brett Payne / Katie McLean

Walters, Balido & Crain, L.L.P.

9020 N. Capital of Texas Highway

Building II, Suite 225

Austin, Texas 78759

/s/ Julie L. Peschel

Julie L. Peschel